

# **The Owl and the Rooster**

Hegel's Transformative  
Political Science

Alan Brudner





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Since 1945, there have been two waves of Anglo-American writing on Hegel's political thought. The first defended it against works portraying Hegel as an apologist of Prussian reaction and a theorist of totalitarian nationalism. The second presented Hegel as a civic humanist critic of liberalism in the tradition of Rousseau. The first suppressed elements of Hegel's thought that challenge liberalism's individualistic premises; the second downplayed Hegel's theism. This book recovers what was lost in each wave. It restores aspects of Hegel's political thought that are unsettling to liberal beliefs, yet that lead to a state more liberal than Locke's and Kant's, which retain authoritarian elements. It also scrutinizes Hegel's claim to have justified theism to rational insight, hence to have made it conformable to Enlightenment standards of admissible discourse in the public realm. And it seeks to show how, for Hegel, the wholeness unique to divinity is realizable among humans without concession or compromise and what role philosophy must play in its final achievement. Lastly, we are shown what form Hegel's philosophy can take in a world not yet prepared for his science. Here is Hegel's political thought undistorted.

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## *Hegel's Transformative Political Science*

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*For my students in Political Science 444Y, 1984–2012*

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## Preface

Since 1945, there have been two waves of Anglo-American writing on Hegel's political thought. The first sought to undo the damage done to Hegel's reputation by works such as Karl Popper's *The Open Society and its Enemies*, which portrayed Hegel as a theorist of the totalitarian nationalism from which the world had just been saved.<sup>1</sup> To our benefit, the authors in this group showed convincingly that the totalitarian reading was false, but in doing so they went to the opposite extreme. They presented Hegel as a rather ordinary sort of Enlightenment thinker, "not radically different ... in level of theorizing," as one writer put it, "from Hobbes, Locke, Montesquieu, and Rousseau."<sup>2</sup> In this way Hegel's political thought was rescued from distortion, but at the cost of domesticating its difference and making it seem bland. Everything unsettling about Hegel's description of the state – that it is the "divine Idea on earth," "ethical Spirit *qua* the substantial will manifest and revealed to itself," an "absolute unmoved end in itself" having "supreme right against the individual, whose supreme duty is to be a member of the state" – was airbrushed away.<sup>3</sup>

The second wave, dating from the mid-1970s, presented Hegel as a counterweight to the resurgence of a contractarian form of liberalism in John Rawls's *A Theory of Justice*. Against the individual-centered, ahistorical, anti-perfectionist liberalism of Rawls, the writers in this group juxtaposed a Hegel they saw as furthering the civic humanist tradition flowing from Aristotle through Renaissance republicanism to the revival of classicism in the work of Rousseau, Herder, Goethe, and Schiller.<sup>4</sup> In opposition to liberalism's dominant strain of atomistic individualism, this tradition affirmed the rootedness of free agents in a common life, devotion to whose laws liberates them from external dependencies, and from whose historical and cultural particularity individual rights take their content and shape. In presenting Hegel as an exponent of this noble counter-tradition in Western thought, the second wave corrected the impression left by the first that Hegel was a conventional liberal thinker.

As valuable as that contribution was, however, it came with an airbrushing of its own. Perhaps to make Hegel's civic conception of freedom persuasive to a contemporary audience, the second-wave authors scuttled the theistic framework in which his political thought is embedded.<sup>5</sup> Some denied Hegel's theism outright, straight-facedly presenting the thinker who described his *Logic* as "the exposition of God as he is in his eternal essence before the creation of nature and of a finite spirit" as one for whom spirit is nothing but human spirit, whose self-originated common life alone delineates the contours of reality.<sup>6</sup> Others acknowledged Hegel's avowed theism but with the embarrassment an adolescent might show in introducing his behind-the-times grandfather to his friends. Either they sidelined it or read it out entirely, arguing that it was unnecessary to Hegel's core civic humanist, communitarian, or social ethics teaching.<sup>7</sup> Whereas, repelled by Hegel's theism, Marx and his followers jettisoned his system as a whole after plundering what was useful to them, these writers jettisoned the theism and retained what they thought was a Hegel relevant to the modern world. In this (knowingly or not) they followed an interpretive method begun by Alexandre Kojève.<sup>8</sup> They reinvented Hegel as a spokesman for a counter-tradition in Western philosophy of which there are other representatives. What was lost, then, was the idea that precisely distinguishes Hegel's position from all others in the history of philosophy and, with it, the *unique* contribution Hegel's thought can make to our understanding the nature and possibility of political justice. What was lost was the divine-human nexus Hegel calls Spirit.

This book seeks to recover what was lost in each wave. First, it restores aspects of Hegel's political thought that are unsettling to ordinary liberal certitudes, even to those of civic humanism, yet that paradoxically produce a state more liberal than Locke's and Kant's, which retain authoritarian elements. So it counters the totalitarian distortion without airbrushing the features that gave it a foothold and that make a perfect liberalism, in which there is no legally unconstrained authority, possible.

Second, the reading offered here takes Hegel at his word when he says that the truth that absolute knowledge knows is the same truth that religious faith believes.<sup>9</sup> It thus highlights, critically but sympathetically, Hegel's attempt discursively to validate theism to rational insight, hence to make theism conformable to Enlightenment standards of admissible discourse in the political realm. So it too seeks to commend Hegel's thought to a liberal audience, but without indulging the latter's assumption (rooted in the equation of theism with faith-based theism) that theism must be for subjective belief and private associations. Indeed, the book presents Hegel as offering the reconciling middle for what is perhaps the defining controversy of contemporary politics: that between the Rawlsian view that theism as such must be banished from the public sphere along with all other thought-systems incapable of a public justification, and the view that *faith-based* theism belongs in the public sphere along with all other faiths that compete for legislative

authority. Hegel's middle is a rational theism capable (he argues) of a public justification.

Third, the book seeks to show how, for Hegel, theism is crucial to understanding what political justice is, how (*contra* the ancients) the wholeness unique to divinity is realizable among humans without concession or compromise, and what role philosophy must play in its final achievement. In all these particular aims, the book tries to present Hegel in his undistorted originality. While Hegel is indebted to all great philosophers who preceded him, his political philosophy belongs to no traditional category – not nationalism, not liberalism, not civic humanism. It is *sui generis*, and it is time that its unexpurgated insights gain a hearing among students of political theory.

Frederick Beiser wrote that an expositor of Hegel must unfortunately choose between the real Hegel and a Hegel relevant to our age.<sup>10</sup> He meant this as a judgment on an age that has lost an appetite for the Absolute and chose the first. This book takes that choice to the implicit next step. It presents the real Hegel as a thinker relevant to our age.

What is offered here has developed over a very long time. It began in the 1970s as a doctoral dissertation in the Department of Political Economy (as it was then called) of the University of Toronto. Among the people to whom I am indebted for it are those who aided my efforts back then, whether in an official or unofficial capacity: Professor Sanford Lakoff, the late Professor Emil Fackenheim, the late Professor H. S. Harris, and the late Professor George Heiman. However, the dissertation only initiated an education to Hegel's political thought that continued through my teaching it for almost thirty years to graduate and undergraduate students in the university department in which I myself was educated. My greatest debt of gratitude for the work in its present form is to the students with whom I studied over all those years.

Parts of this book draw from and develop material previously published as either a journal article or volume chapter. Chapter 5 borrows from "Constitutional Monarchy as the Divine Regime: Hegel's Theory of the Just State," *History of Political Thought*, vol. II (1), (spring, 1981). Chapter 6 develops "Hegel on the Relation between Law and Justice," which appeared in Thom Brooks, ed., *Hegel's Philosophy of Right* (Oxford: Blackwell, 2012).

Concerning my translation of Hegel's terms, only one comment is needed. Hegel's *Geist* is rendered throughout as either "mind" or "Spirit" depending on whether the context implies the human or divine nature. So, human *Geist* is mind, divine *Geist* Spirit. I chose "Spirit" over "Mind" because the latter might suggest something limited (for example, by matter or by another mind) whereas Hegel's divine *Geist* is unlimited. Of course, what makes "Mind" inapt for the divine nature is just what makes "mind" suitable for the human. Capitalization of such nouns as self (or ego), reason, will, state, and whole generally obeys the same principle. The lone exception occurs with Schelling's objective Reason, which, though it can be understood non-theistically, I capitalize to distinguish it from Kant's pure reason of individuals.

For his unwavering support of this project I thank Robert Dreeson, Senior Editor at Cambridge University Press. For helpful comments I thank Ronald Beiner, Arthur Ripstein, and two reviewers for the Press.

For things too ineffable to name, I thank my wife, Fern.

## Notes

- 1 In this group belong Walter Kaufmann, *Hegel: Reinterpretation, Texts, and Commentary*, Z. A. Pelczynski, "Introductory Essay," HPW, and Shlomo Avineri, *Hegel's Theory of the Modern State*.
- 2 Pelczynski, HPW, p. 135.
- 3 For a similar observation see Peter Steinberger, *Logic and Politics*, p. viii. An exception, however, was Raymond Plant, *Hegel*.
- 4 Charles Taylor, *Hegel*; Peter Steinberger, *Logic and Politics*; Steven Smith, *Hegel's Critique of Liberalism*; Allen Wood, *Hegel's Ethical Thought*; Michael Hardimon, *Hegel's Social Philosophy*; Robert Williams, *Hegel's Ethics of Recognition*; Alan Patten, *Hegel's Idea of Freedom*; Axel Honneth, *The Struggle for Recognition*; Terry Pinkard, *Hegel's Phenomenology*; Robert Neuhouser, *Foundations of Hegel's Social Theory*; Robert Pippin, *Hegel's Practical Philosophy*; Timothy Luther, *Hegel's Critique of Modernity*.
- 5 Exceptions are Frederick Beiser, *Hegel* and M. J. Inwood, *Hegel*. However, the God-concept Inwood ascribes to Hegel is the one-sidedly universal "Mind" that Hegel criticized in Schelling; see pp. 246–58.
- 6 SL, p. 29. Robert Solomon calls Hegel an atheist whose explicit statements to the contrary are "an elaborate subterfuge to protect his professional ambitions in the most religiously conservative country in Northern Europe"; *From Hegel to Existentialism*, p. 57. Robert Pippin's revisionist accounts of the *Phenomenology*, *Logic*, and *Philosophy of Mind* read out Absolute Spirit and give us a Hegel whose basic position is a variation on the Kantian theme of human self-consciousness; see *Hegel's Idealism*, pp. 5–15, 168, 206; *Hegel's Practical Philosophy*, pp. 7–11, 113–5. Steven Smith, for whom Spirit is "nothing other than humanity or mankind in general," presents Hegel as a "classical humanist" for whom freedom means "humanity's awareness that it is ... sovereign over nature ..." and for whom truth issues from a community consensus reached under conditions of non-domination; *Hegel's Critique of Liberalism*, pp. 13, 177, 211, 221–2; Terry Pinkard asserts that the "world spirit is just the human community taken as a whole, seen from the standpoint of humanity's gradually coming to terms with itself through its developing sets of social and political institutions ..."; *Hegel's Phenomenology*, p. 335; cf. *Hegel's Naturalism*, pp. 9, 194. Equating a transcendent Absolute with an "all-powerful puppet-master," Stephen Houlgate also denies transcendence in Hegel, who becomes a proponent of the historicity of mankind as a self-producing being whose becoming aware of this truth is all that history is about; *An Introduction to Hegel*, pp. 14, 21–25.
- 7 Charles Taylor understands Absolute Spirit as a "cosmic spirit" that is "neither the transcendent God of theism, nor simply equivalent to the spirit of man"; see *Hegel*, p. 71. Little wonder, then, that he views Absolute Spirit as an obscure, perhaps even incoherent notion from which Hegel's relevance must be salvaged; see

pp. 100, 537–71. Allen Wood admits that, in Hegel’s self-understanding, his political philosophy is a “rational theodicy”; but he sets out to redeem its positive teaching for practical philosophy from the “official” theistic framework he considers dead; *Hegel’s Ethical Thought*, pp. xiii, 1–14; Alan Patten, while not rejecting a theistic (or “metaphysical”) reading of Hegel, puts it aside in favor of a “civic humanist” reading; see *Hegel’s Idea of Freedom*, pp. 16–27, 34–40. Frederick Neuhaus presents the institutions of Hegel’s Ethical Life as “securing for its members an important and recognizable human good . . . without appeal to Hegel’s theodicy of cosmic spirit,” which theodicy he considers implausible, unappealing, and unnecessary to the intelligibility of “social freedom”; *Foundations of Hegel’s Social Theory*, p. 52. Axel Honneth’s “reactualization” of the *Philosophy of Right* removes from the latter’s core Hegel’s theistic (or “substantialist”) conception of the state as well as his ontological concept of Spirit, which he considers beyond rehabilitation; *The Pathologies of Individual Freedom: Hegel’s Social Theory*, pp. 4–5. Even Peter Steinberger’s pioneering work linking the *Philosophy of Right* to the *Logic* cannot bring itself to take Hegel at his theistic word. Steinberger reads out (“despite what Hegel says at various times”) Hegel’s claim to understand the world from “a God’s-eye point of view,” which claim, he says, “would be best viewed in the usual manner, as an obscure and rather odd collection of assertions worth considering only for antiquarian reasons.” *Logic and Politics*, pp. 105, 110–1.

8 *Introduction à la Lecture de Hegel*, ed. Raymond Queneau.

9 *Werke*, XVII, 341: “Faith already has the true content, but what it still lacks is the form of thought.”

10 Beiser, *Hegel*, pp. 3–7.



## Abbreviations

### Works by G. W. F. Hegel

- A            Addition (transcription by his students of Hegel's oral elaborations on the numbered paragraphs of the Enz and PR)
- Briefe*       *Briefe von und an Hegel*, 4 volumes, ed. Johannes Hoffmeister (Hamburg: Meiner, 1952)
- D            *The Difference Between Fichte's and Schelling's System of Philosophy*, trans. H. S. Harris and W. Cerf (Albany: State University of New York Press, 1977)
- Enz*        *Enzyklopädie der philosophischen Wissenschaften im Grundrisse*, 3 volumes (1830). Cited by paragraph number.
- EL          *The Encyclopaedia Logic*, trans. T. F. Geraets, W. A. Suchting, and H. S. Harris (Indianapolis: Hackett, 1991)
- ETW        *Early Theological Writings*, trans. T. M. Knox (Philadelphia: University of Pennsylvania Press, 1971)
- F&K        *Faith and Knowledge*, trans. Walter Cerf and H. S. Harris (Albany: State University of New York Press, 1977)
- GPR        *Grundlinien der Philosophie des Rechts*, eds. Klaus Grotzsch and Elisabeth Weisser-Lohmann, *Band 14(1)* of Hegel, *Gesammelte Werke* (Hamburg: Meiner, 2009)
- HHP        *Hegel's Lectures on the History of Philosophy*, trans. E. S. Haldane and Frances H. Simson, 3 volumes (London: Routledge and Kegan Paul, 1896)
- HP         *Lectures on the History of Philosophy 1825–6*, 3 volumes, trans. R. F. Brown and J. M. Stewart with H. S. Harris (Oxford: Clarendon Press, 2006–9)
- HPW        *Hegel's Political Writings*, trans. T. M. Knox (Oxford: Clarendon Press, 1964)



JKS	<i>Jenaer Kritische Schriften</i> , eds. Hartmut Buchner and Otto Pöggeler, <i>Band 4</i> of Hegel, <i>Gesammelte Werke</i> (Hamburg: Meiner, 1968)
LNR	<i>Lectures on Natural Right and Political Science</i> (Heidelberg, 1817–1819), trans. J. M. Stewart and P. C. Hodgson (Berkeley: University of California Press, 1995)
MW	<i>Miscellaneous Writings of G.W.F. Hegel</i> , ed. Jon Stewart (Evanston: Northwestern University Press, 2002)
NL	<i>Natural Law</i> , trans. T. M. Knox (Philadelphia: University of Pennsylvania Press, 1975)
PH	<i>The Philosophy of History</i> , trans. J. Sibree (New York: Dover, 1956)
Phän	<i>Phänomenologie des Geistes</i> , eds. Hans-Friedrich Wessels and Heinrich Clairmont (Hamburg: Meiner, 1988)
Phen	<i>Hegel's Phenomenology of Spirit</i> , trans. A. V. Miller (Oxford: Oxford University Press, 1977)
PM	<i>Hegel's Philosophy of Mind</i> , trans. W. Wallace and A. V. Miller (Oxford: Oxford University Press, 1971)
PP	<i>The Philosophical Propaedeutic</i> , trans. A. V. Miller, eds. Michael George and Andrew Vincent (Oxford: Blackwell, 1986)
PR	<i>Outlines of the Philosophy of Right</i> , trans. T. M. Knox, ed. Stephen Houlgate (Oxford: Oxford University Press, 2008)
Realphil I	<i>Jenaer Systementwürfe I</i> , eds. Klaus Düsing and Heinz Kimmerle, <i>Band 6</i> of Hegel, <i>Gesammelte Werke</i> (Hamburg: Meiner, 1975)
Realphil II	<i>Jenaer Systementwürfe III</i> , ed. R. P. Horstmann, <i>Band 8</i> of Hegel, <i>Gesammelte Werke</i> (Hamburg: Meiner, 1976)
Sch&Ent	<i>Schriften und Entwürfe</i> (1799–1808), eds. Manfred Baum and Kurt R. Meist with Theodor Ebert, <i>Band 5</i> of Hegel, <i>Gesammelte Werke</i> (Hamburg: Meiner, 1998)
SysSitt	<i>System der Sittlichkeit</i> (in Sch&Ent)
SE	<i>System of Ethical Life and First Philosophy of Spirit</i> , trans. H. S. Harris and T. M. Knox (Albany: State University of New York Press, 1979)
SL	<i>The Science of Logic</i> , trans. and ed. George Di Giovanni (Cambridge: Cambridge University Press, 2010)
VR	<i>Vorlesungen über Rechtsphilosophie</i> , ed. K.-H. Ilting, 4 volumes (Stuttgart: Frommann-Holzboog, 1973–4)
Werke	<i>Werke in zwanzig Bänden</i> , eds. E. Moldenhauer and K. M. Michel (Frankfurt: Suhrkamp, 1970–1). Cited by volume number.
Z	<i>Zusatz</i> (see A)

When quoting from Hegel's texts, I cite the German edition if the translation is my own, followed by the English edition if the first reference is to a page (rather than a paragraph) number. Otherwise I cite only the English edition.

**Works by Immanuel Kant**

- CPR Kant, *Critique of Pure Reason*, trans. and eds. P. Guyer and A. Wood (Cambridge: Cambridge University Press, 1998). Page references are to Kant's first (A) and second (B) editions, the page numbers of which appear in the margins of the Guyer-Wood edition.
- CPrR Kant, *Critique of Practical Reason* in Kant, *Practical Philosophy*, trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1996). Page references to this and the following three works are to the volume and page number of the Prussian Academy edition of Kant's collected works. These appear in the margins of the Gregor edition.
- GMM Kant, *Groundwork of the Metaphysics of Morals* in Kant, *Practical Philosophy*, trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1996)
- MM Kant, *Metaphysics of Morals* in Kant, *Practical Philosophy*, trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1996)
- TPP Kant, *Toward Perpetual Peace* in Kant, *Practical Philosophy*, trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1996)

# Introduction

## I Theses and Themes

This book expounds Hegel's philosophy of history, politics, and public law with a view to four connected aims and themes. One purpose is to elucidate and defend to a critical mind the most arresting of Hegel's claims in political philosophy: that, by virtue of a natural divinity Hegel calls Spirit, Nature contains a potential for uniting the wholeness of the Greek philosophers' ideal *polis* with the atomistic individualism of modernity – hence for commending the ancients' ideal to the individual's particular self-interest without compromising its purity. Other philosophers and artists – notably Rousseau and Schiller – sought to recover classical wholeness under the sovereignty of the general will or within the domain of aesthetic “play”; but only Hegel taught that the whole potentially envelops the *particular* will – the will separate from the general and isolated from others – and that history's goal is to perfect that potential in a *state*.

It is possible to express that doctrine in ways that file down the opposites Hegel claims are united and so make seemingly otiose the divinity he thought was needed to join them. So, many have observed that Hegel's political thought attempts to reconcile the virtue of the ancients with the liberty of the moderns or Greek community with modern individualism, free personality, or moral autonomy.<sup>1</sup> While not incorrect, these formulations don't quite get the length of the paradox that Hegel teaches and that distinguishes his thought from all predecessors and successors. The paradox is Nature's potential union of organicism and atomism. It is the inherent complementarity of the ancient thesis that human beings fulfill their natures and attain their dignity as self-ruling members of a *polis* and the modern thesis that the human individual is morally self-supporting, owing its dignity to its own free will, so that its natural state is one of mutual isolation and indifference. Succinctly, Hegel teaches Nature's

latent harmony of ancient natural law and modern natural right. That he does so cogently even though a certain kind of theism is essential to the claim is one of the main themes of this study.

Another is that, without violating its stricture against telling the state what it ought to be, Hegel's philosophy means to play a transformative role in bringing human nature to fulfillment in a perfect kingdom that realizes the ancients' ideal while giving objective reality to the individual's separate worth. True, the owl of Minerva takes flight only with the falling of dusk, but in doing so it becomes a rooster whose cockcrow awakens sleepers to a new dawn. We'll see that, without contradicting its claim to interpretive passivity, Hegel's philosophy aims to be world-changing. Specifically, it means to intervene in human affairs in order to raise civil society as seen from an anthropocentric standpoint to the State that completes history viewed from a theocentric standpoint. That is the second theme of the book. The third is a question – namely, what are the historical and institutional conditions that make the time ripe for philosophy's transformative intervention? And the fourth concerns the implications going forward of these conditions' failure to materialize historically.

The first theme is worth emphasizing because political theory today is largely a polite war between advocates of precisely the ideas Hegel sought to unite. Liberalism and communitarianism are today's ideological antipodes, framing domestic and international politics in the twenty-first century as capitalism and communism did in the twentieth. The ideas for which these labels stand animate powerful political movements that pull political life in opposite directions: toward greater global unification, at one pole, and endless division along cultural lines, at the other. Not surprisingly, Hegel is claimed by both camps as its intellectual precursor, or one of them. For communitarians, he is the modern Aristotle – a critic of natural rights and a model for normative inquiry anchored to social practices as they exist within particular historical contexts and cultural wholes.<sup>2</sup> For liberals, he is Kant's intellectual heir, having fulfilled Kant's idea for a universal history of mankind ending with the equal freedom of all in the modern constitutional state.<sup>3</sup> In this tug of war over Hegel's legacy, both sides are mistaken because both are correct. As this book argues, Hegel's political philosophy is neither communitarian nor liberal but the unity of both in a synthesis Hegel thought was historically nigh but whose preconditions were missing in his day and remain absent in ours. To see what is missing is to understand the intractability of the present conflict but also to envision the institutional reforms needed to prepare for its philosophic mediation.

Hegel's discovery of a nexus between ancient natural law and modern natural right speaks to contemporary political thought in yet another sense. The so-called quarrel of ancients and moderns was originally a dispute among seventeenth-century literary critics, but it has resurfaced today as a debate among political theorists over the continuing relevance of the political ideals of the ancients. At its origins, modern political philosophy rejected the ancient ideals as guides for political science and practice, but to Leo Strauss and those

he inspired, this decision set political thought on a downward course toward legal positivism and moral relativism, of which the totalitarianisms of the twentieth century would be the ultimate beneficiaries. In this story of moral decline, Hegel's thought occupies the role of *dénouement*. Claiming that all philosophy is the thought of its time but that his philosophy had achieved absolute knowledge, Hegel could hold those thoughts together, Strauss argued, only if he thought history had in principle ended with the *bourgeois* revolutions inaugurating economic freedom and the equality of persons.<sup>4</sup> But what a sad ending that is! The lowering of political ideals characteristic of modernity in general is taken to a nadir by Hegel, as the goal of history becomes the Last Man depicted by Nietzsche's Zarathustra – the man for whom creature comfort and security are the chief ends of life.<sup>5</sup> If that is where history ends, Allan Bloom queried, must we not reconsider the ahistorical ideal of rare nobility held up as the end of political order by the ancients?<sup>6</sup>

One consequence of this book's argument is that Strauss and his progeny are mistaken about the relationship between ancient and modern political philosophy. In reading Hegel with minds pre-committed to a narrative of modernity's decline from the ancients' lofty ideals, they fail to confront the singular challenge his philosophy poses to that one-sided story. This book highlights that challenge. It brings to the fore and scrutinizes Hegel's argument purporting to show that history's goal is the reconciliation of ancients and moderns in a new *polis* sufficient for the nobility of *all* human beings. Not the Last Man but the individual ego whose conviction of absolute worth is confirmed in the laws of a state it can therefore revere is for Hegel history's end-product; and that end, we'll see, is unachievable without transcendent aid. Moreover, the book examines Hegel's argument for the amenability to synthesis of the dichotomies Straussians continually present as fixed: of ancient natural law and modern anti-natural law, of classical antiquity's aristocracy of the wise and modernity's democratic equality of the free, of the ahistorical teleology of the ancients and the non-teleological historicism of the moderns. Finally, it engages with Hegel's arguments claiming to show that, because of a truth anticipated (but distorted) by Christianity, the ancients' idea of the just state can be venerated for the sake of the separate ego without compromising the idea's rigor or purity. Throughout, I try to exhibit the force of Hegel's arguments – up to a point. For, while I defend Hegel's claim that the quarrel between ancients and moderns is in principle terminable, I also argue that reconciliation depends on historical conditions that do not exist; and it depends, too, on a philosophic intervention in history that, if not timely, is vulnerable to the slings and arrows critics have aimed at it.

That Hegel's political philosophy means to play a transformative role is a point also worth pressing – for three reasons. First, underscoring this aim places in correct perspective Hegel's famous saying that philosophy's task is to understand rather than to prescribe – a saying that, without perspective, leaves Hegel exposed to accusations of quietism, resignation, and servility to history.

I'll say more about this presently. But since accusations of this sort helped justify the morally ruthless revolution of creative spirits urged by Friedrich Nietzsche, exposing their falsity might revive Hegel's moderate alternative to Nietzsche's extreme anti-modernism – one that knows how to surpass *bourgeois*-Christian order in a noble politics without committing what all but the free spirits regard as crimes.<sup>7</sup>

Second, accentuating Hegel's transformative purpose challenges views about how his philosophy relates to political practice held by his two most influential interpreters – Karl Marx and Alexandre Kojève. According to Marx (whose eleventh thesis on Feuerbach surely has Hegel in mind), Hegel's philosophy tries to overcome objective reality's apparent foreignness to rational purpose by means of a thinking that leaves the economic basis of estrangement intact.<sup>8</sup> It thus produces the kind of satisfaction Hegel himself criticized in Epictetus, the Stoic, who could consider himself free in thought while remaining a slave in fact. For Kojève, by contrast, Hegel's philosophy arrives as an afterthought to a practical human self-emancipation achieved without it.<sup>9</sup> It is, he argues, humanity's *ex post* grasp of the French Revolution and the human rights empire it founded as the meaning of its history and the satisfaction of its striving, a self-knowledge possible only if, all being respected as equals, there is no further meaning to unfold, so no more history, no more striving, and no further wisdom.

Despite their differences, these views share a common misconception – one inherited by the many political theorists past and present who read Hegel through Marx's or Kojève's eyes.<sup>10</sup> Both deny any practical function to Hegel's philosophy, and both share a consequent belief that the socio-political order deemed final by Hegel pre-exists his philosophy as a human creation in time. On this view (call it the quietist reading), Hegel's political thought aims to reconcile critical reason to the post-revolutionary state by exhibiting its institutions as organs of a rational system the mind can endorse despite shortfalls from the model in empirical states. Its role is to understand the modern world, not to change it.<sup>11</sup>

This book contests the quietist reading. It argues that, in the form presented in the *Phenomenology of Spirit*, Hegel's philosophy aims to transform the world it understands. I don't mean this in the uncontroversial sense the quietist reading can embrace. Others have observed that, in unveiling the rational structure of the modern world, Hegel serves up a normative standard (the Ethical Idea) in light of which reformers can improve empirical institutions that deviate from their rational models.<sup>12</sup> That is not the sense of transformation I mean. I mean that the unveiling itself aims to bring into existence a world different from the one that existed prior to the unveiling. But neither should this be taken as echoing the common suggestion that, in understanding a world grown old, Hegel grasps the conceptual germ of the next temporal world order.<sup>13</sup> That suggestion flies in the face of Hegel's claim to have stood at a privileged moment in time at which both world history and the philosophy of humanity entwined therewith

could be understood as in principle complete. For that claim to harmonize with a world-transforming purpose, the new world must come into existence merely through general acceptance of the inherent reasonableness of the existing one disclosed by philosophy. But then, one might wonder, in what sense would that world be new?

To come to the point: Hegel's philosophy, I argue, sees itself as a bridge necessary for crossing from the bifurcated (into state and society) civil society of modernity to the dialectically unified State that completes divine-human history. So the movement is not from one temporal order to another but from a human state in the stream of time to a divine State that fulfills rational history. That history dawns brightly with the Greek state and ends with a Greco-modern State. So Hegel's final State is not the modern one ordered to human rights preceding the state, and it certainly is not a universal state. It is a new *polis*, one among many, like the old an end for humans, but now inwardly developed to incorporate modernity's rights of the stateless ego – a combination of opposites (the state as end, the stateless ego as end) no human mind can contain or achieve alone. That State is finally attainable only with the aid of a philosophy that, through a verifiable discourse, reveals the opposites as potentially reconciled both in Nature and in the present, thereby enabling the mutual recognition of public authority and private interests that makes reconciliation actual and the State whole.

Third, showing how Hegel's philosophy means to bridge the distance between human society and a divine-human State presents Hegel as speaking to the modern controversy about the place of theism in political life. Equating theism with faith-based theism, contemporary liberal thought banishes theism as such from the state, in which only what can be publicly justified to reason can have valid authority. It thus divorces the sacred community from the state, privatizing the former and secularizing the latter, but at the cost of lowering the state from a humanly fulfilling union for the highest good to a means of securing what all can value whatever their fundamental beliefs. Conversely, subordinating the state to theism directs public life to a good capable of engaging the human longing for a role in a final purpose, but at the cost of privatizing the state into a tyranny of the faithful. So, the possibilities seem restricted to a political authority that is broadly acceptable but low and one that is lofty but tyrannical. Because each side makes a point responsive to a profound human interest, they fight a war of ideas, and now a war of armed ideas.

Hegel's political thought sees itself as mediating this conflict. It claims to present a theism publicly justifiable to rational insight such that all can freely accept a political authority exercised in its name. So it tries to meet the Enlightenment criterion for valid coercive authority without lowering the ends of the state or treating humanistic ends as ultimate. We'll see that Hegel's final State is neither a secular state alongside a religious community directed to transcendence nor a state that (like the first French Republic, Soviet, and Nazi states) has ousted or subordinated religion by storming and demolishing transcendence. It

is rather a State that embodies the clear wholeness, unique to divinity, enveloping both a collective and a separate individual mind, and that, in doing so, fulfills the same longing for specific worth engaged by the Church but whose satisfaction is deferred therein. It is, accordingly, a State in which secular and faith-based communities merge in a middle that is neither secular nor faith-based but that is at once political and sacred. Such a State cannot, however, come fully into existence by human action unaware of its significance from the theocentric standpoint. It requires a revelation – this one appealing to rational insight and demonstrating that the just State's existence is all but accomplished, requiring only the recognition of its authority to become fully so. Hegel's philosophy claims to be this rational revelation.

In arguing these points and testing these claims, I'll also present a context within which criticisms commonly directed against Hegel's philosophy can be properly evaluated. I refer to the charges of logical reductionism, ideological rationalization, and statism. According to the first of these, Hegel's philosophy is a transcendental idealism that, instead of understanding society and political life in their own terms, foists on them an artificial meaning in terms of ends and logical categories external to them. Instead of walking on his feet like the rest of us, deriving ideas from human experience, Hegel walks on his head, deducing real phenomena from autonomous ideas. This fault is allegedly present both in the *Phenomenology of Spirit*, where the distinction between material life and philosophic thought is said to be reduced to a distinction within thought between consciousness and self-consciousness, and in the *Encyclopaedia of the Philosophical Sciences*, where nature and intelligent life are allegedly forced into a prefabricated and abstract movement of concepts.<sup>14</sup> In the course of demonstrating the practical role of Hegel's philosophy, I'll defend Hegel against the charge of logical reductionism, at least the form of it just outlined. I'll not deny that Hegel ultimately imposes on political life a rationality lacking to it *as a matter of fact*; however, I'll put this outcome in a light that enables us to explain it just as well by the prematurity of Hegel's philosophy as by its transcendental-idealist standpoint.

The charge of ideological rationalization takes two forms, one of which is a corollary of the charge of reductionism. By reducing natural and anthropological phenomena to timeless logical categories, Hegel (it is alleged) exalts empirical accidents into metaphysical necessities. This so-called panlogism of Hegel is seen as coming to a head in his political philosophy, which, say the critics, eternalizes the temporally given features of the modern (some say even the Prussian) state.<sup>15</sup> Defenders of Hegel typically retort that, as a human product, Hegel's state is in principle finite (limited by nature) and fragmented (into mind and nature), pointing thereby to an unbridgeable gulf between political life, on the one hand, and the practices – art, religion, and philosophy – wherein humanity relates to an infinite whole, on the other.<sup>16</sup> However, this defense turns out to be a plea of guilty to a lesser charge. From an idolater of the modern state, Hegel becomes the resigned apologist of its shortcomings.<sup>17</sup> Because, moreover, this



defense contradicts Hegel's own statements affirming the state's inherent divinity, it is a weak answer to the charge that Hegel identifies a temporal state-type with reason's timeless archetype. This accusation is decisively refuted only by showing that Hegel's ideal state is unreachable by unaided human action in time – that it is attainable only by means of a bridge that *keeps apart* even as it links the temporal and the eternal, and that this bridge is Hegel's philosophy itself.

In the other version of the charge that Hegel's philosophy is a form of ideology, Hegel is accused, not of conferring eternal validity on what contingently exists but of acquiescing blindly in transient existence as such. Here one must distinguish between a liberal and a Marxist critique of Hegel's supposed political conservatism, although both see the latter as rooted in the theistic framework of his thought. In the liberal view, Hegel's conservatism lies in his alienating human critical reason to an objective, historical process said to be the vessel of a divine Reason.<sup>18</sup> In regarding the state as "the march of God in the world,"<sup>19</sup> Hegel (it is alleged) espouses a moral positivism that kneels to history as to something beyond good and evil, cedes absolute authority to the *status quo*, naming "right" whatever succeeds, "ethical" the endorsement of custom, and "arbitrary" or "arrogant" the measuring of what is by what ought to be. For Marx, by contrast, Hegel's conservatism lies in his quietist acceptance of, indeed his justifying, the split between the public and private sectors of modern civil society. According to Marx, Hegel makes the historical opposition between what unites human beings (mind) and what separates them (nature) a permanent condition of mind's self-knowledge as nature's end. He then considers the goal achieved by thinking that harsh opposition into the benign distinction between universal and particular minds within the unity of self-consciousness. The result, Marx argues, is that Hegel gives a philosophic *imprimatur* to bifurcation in life, even while pretending to overcome it in thought.<sup>20</sup>

Echoes of Marx's critique reverberate in twentieth-century commentaries on the several iterations of Hegel's *Philosophy of Right*. So, after noting Hegel's proto-Marxist analyses of poverty and heteronomous labor within capitalist production, Lukács, Marcuse, Avineri, Plant, Taylor, and Wood ascribe to him a fundamentally tragic outlook on the conditions of heteronomy he so perceptively describes.<sup>21</sup> Hegel, it is said, analyzes the manifold forms of heteronomy in modern life not so as to exhibit their inherent transience, still less with a view to prescribing practical reforms, but rather to reconcile thought to their inner necessity. Not action to overcome heteronomy is the counsel of Hegel's science (say these critics), but resignation, acceptance of fate, and flight into a worldless thought.

To understand Hegel's philosophy as a bridge from the civil society of modernity to the State that fulfills divine-human history is to reject the ascription to Hegel of political conservatism, whether defined as an indiscriminate acquiescence in the *status quo* or as a resigned acceptance of the mind-nature dualism

in political life. Against the liberal critique, I argue that critical reason's surrender to history comes (or is meant to come) only at a time when the just State is *de facto* potentially realized in the objective world and when the surrender is itself the one thing still needed to realize it completely. Against the Marxist critique, I argue that the historical antagonism between mind and nature is a relative and passing necessity as much for Hegel as for Marx; that the human psyche is therefore potentially whole such that the individual can be self-determining both as sharing a civic mind and as asserting a separate, self-interested ego; that this inherent or primordial potential becomes an historical one when Kantian ideas have reached the limit of their transformative power – have done all they can to reshape civil society; and that Hegel's philosophy is the *last* thing needed to actualize the potential. Again, I'll not deny that Hegel is in the end forced to flee political realities into quietist and resigned contemplation. However, I'll argue that this result is attributable not to Hegel's head-standing idealism but rather to the force of circumstances not yet ripe for it.

Finally, there is the charge that portrays Hegel as a philosopher for whom the state is everything and the individual nothing. Briefly summarized, the indictment runs as follows. The author of a metaphysical theory of the state, Hegel conceives the latter as the incarnation of the divine Will and hence the absolute power on earth. To the glory of this state, he makes the individual a mere means; to its absolute authority, he sacrifices freedom of conscience and expression, all the while claiming to champion freedom by sophistically equating it with submission to the state.<sup>22</sup> Here again, Hegel has not been without defenders, who can point to the liberal elements of his ideal state: the supremacy of the constitution, a figurehead monarch, due legal process, a meritocratic civil service, and a representative legislature. Yet arguments claiming Hegel for the liberal-democratic tradition founder on the parts of his political thought unquestionably at odds with that tradition – his critique of popular sovereignty, of democratic republicanism, of individualistic representation, and of the social contract theory of political authority.<sup>23</sup> For Hegel, Spirit, not the people, is sovereign; a constitutional monarch, not a legislative assembly, expresses the sovereign's will; estates and corporations, not individuals, are the units of representation; and the State is a final end for individuals, not a means for securing their pre-political interests or rights.

That both liberal critics and liberal defenders of Hegel have a point should tell us that their dispute is sterile and to no point. Each side isolates one aspect of the whole that Hegel calls Spirit and accentuates it at the other's expense. That Hegel is neither a statist nor an individualist but a philosopher for whom collective authority and the separate person are complementary ends for each other; that, consequently, the private rights of persons (to lawful liberty and property) are inherently embedded *within* sovereign authority such that classical liberalism's authoritarian sovereign is surmountable in a fully constitutional State; and that Hegel's end-in-itself State thus perfects liberalism even while turning it on its head – these too are themes of the following study. However,

I argue, only the timely intervention of philosophy can raise civil society to this perfection. As we'll see, the philosophic bridge linking the modern to the ideal State is precisely a middle term between the state's universal will and the individual's particular will – one that, in its independence of either considered humanly, embraces both *qua* separate, and through which each can thus submit to the other without self-loss.

The book's organization is determined by its particular aims. It does not follow the order of Hegel's works chronologically, for it is not an intellectual biography. Nor does it follow Hegel's own organization of the system of science, for the book's aim is not exegesis for its own sake. Instead, the book asks specific questions about the problem of politics and the goal of history as these are understood within Hegel's system, about the role Hegel's philosophy sees itself performing in solving the problem and advancing the goal, about the social and political conditions that make the time ripe for philosophy's assistance, and about the direction Hegel's philosophy can take in a world not yet prepared for its science. Exegesis is for the sake of throwing light on these questions.

In accordance with its aims, the book is divided into three parts. Part I sets out the problem of circularity involved in the mutual presupposition of Hegel's science of reality and the perfect State's realization. It thereby discloses the need for a preliminary way of presenting science that, unlike the *Encyclopaedia of the Philosophical Sciences*, does not require a perfect State as its existential presupposition and that could therefore be a bridge both to the perfect state and to systematic knowledge. Part II exhibits the *Phenomenology of Spirit* as fulfilling this need. Part III inquires, through readings of Hegel's *Philosophy of Right* and *Philosophy of History*, into the historical and institutional conditions defining the ripeness of the time for philosophy's intervention. It also considers the implications for Hegel's scientific claims of the absence of these conditions both in his time and in ours. Finally, it offers an example of the form a Hegelian philosophy might take during the time of science's abeyance.

The rest of this Introduction describes the intellectual path taken by the young Hegel as he moves toward formulating the goals of his mature political philosophy. Although this path leads from one false start to another and has been well treated by others, we retrace it here for two reasons: one, to contextualize within Hegel's development the problems to which his mature political philosophy responds; and, two, by exposing the conceptual flaws in his youthful aims that drove Hegel to his ultimate project, to critique those who would champion the civic humanist Hegel of the Tübingen, Bern, Frankfurt, and early Jena years at the expense of the Heidelberg–Berlin system-maker and rationalist theologian.<sup>24</sup> While setting forth Hegel's mature goals at this early stage risks obscurity, it might nonetheless serve as a compass by which readers may orient themselves as we pause at way-stations that Hegel wisely abandoned. So, let us say that, by 1806, while an unsalaried private lecturer at the University of Jena, Hegel had formed a philosophical agenda that included the following objectives for a science of the state:

- (a) to uncover the potential latent in Nature for reconciling the Greek ideal of humanity as self-fulfilling service to a civic mind with the modern conception of the human individual as morally self-sufficient (owing its dignity to its free will alone), hence naturally apolitical, solitary, and egocentric;
- (b) thereby to demonstrate as abstractions from a latent whole Christianity's church (in which the reconciliation is received as a supernatural *fait accompli* miraculously revealed to the faithful and deferred to an otherworldly city) and modern civil society (in which the potential is unwittingly developed through the pursuit of rational, ego-based ends but never fully realized);
- (c) to reveal, through a publicly verifiable political science for which historical conditions are ripe, civil society's ego-driven development as the all-but-final realization by humanity of the reconciliation passively received in the church; and
- (d) by that now scientific and public revelation to raise modern civil society to its perfection in a State that synthesizes in the middle the Greek *polis* and modern society, church and secular state.

That is the destination. Let us now follow first Hegel's, then German philosophy's, road to it.

## 2 The Three Phases of Hegel's Thought

It makes sense, as we'll see, to divide Hegel's work into three phases of development. The first phase runs from 1793 (Hegel was born in 1770) to 1796 and may be called the Tübingen–Bern period; the second, which I'll call the Frankfurt–Jena period, extends from 1797 to 1804; and the third and mature phase spans the years from 1805 in Jena to Hegel's death in Berlin in 1831. The work of the first two phases consists mostly of drafts and fragments unpublished during Hegel's lifetime, but also of articles published in the *Critical Journal of Philosophy*, which Hegel co-edited with his friend at that time, Friedrich Schelling. The third phase dates from the system-draft of 1805–6 and ends with the 1830 essay on the English Reform Bill. I describe the first two phases here and the third phase in the rest of the book.

### 2.1 The Tübingen–Bern Period

A practical interest propels Hegel's intellectual life from the beginning. The first phase of his development as a philosopher encompasses his years as a student in the Tübingen seminary and as a tutor in Bern. During this phase, Hegel has no interest whatsoever in theoretical understanding, let alone in metaphysics. His interests are all practical, moral, religious, and political. He identifies theoretical reason with “discursive understanding” (*räsonierende Verstand*) – the cold analysis of concepts and classification of objects (which he likens to “the cabinet

of the naturalist, wherein the insects have been killed, the plants dried, the animals stuffed or pickled”) or the instrumental knowledge of the prudent hedonist (a “courtier who adapts himself complaisantly to his lord’s caprices”) – none of which are capable, as morality and religion are, of engaging the heart and motivating the will.<sup>25</sup> His heroes are Rousseau and the Kant of the second Critique and of the just published *Religion within the Bounds of Reason Alone*. In this period, Hegel sides with the classicist reaction against the Enlightenment begun by Rousseau and now led in Germany by such figures as Lessing, Herder, Goethe, and Schiller. This was a movement against Enlightenment norms of critical detachment, instrumental rationality, universal humanity, and ahistorical truth in favor of passionate self-fulfillment, practical moral reason, parochial civic virtue, and historical concreteness.<sup>26</sup> The model for this movement was not a theoretical ideal but a particular historical phenomenon: the fusion of reason and sentiment in the free patriotism and art of the ancient Greeks.

Because the young Hegel identifies theoretical understanding with a dispassionate and instrumental form of it, he spurns theoretical understanding of the world as such. Instead, he throws himself into what he considers the most pressing practical problem for Germans of his day – that of nation-building as a condition for psychic integration. Germans, he laments, are disunited as a people and therefore internally fragmented as individuals. They lack a vibrant public life that could channel sensuality into virtuous action for a common purpose. As a consequence, sensuality expresses itself in narrow particularism, while reason flees to a fictive idea of Empire. Moreover, this state of affairs is supported by Christianity, which denigrates noble passions, teaches otherworldliness, and encourages a superstitious religiosity servient to ordinary ends.<sup>27</sup> The young Hegel wants to see his country unified by rational laws and enlivened by patriotic virtue. In his voice we hear modernity’s trio of great civic republicans: Machiavelli (whom he praises as “an intellect of the highest and noblest kind”),<sup>28</sup> Rousseau, and Kant. Because the French Revolution had achieved his civic ideal for France, he ardently supports it and yearns for the migration of its ideas to Germany.

As Hegel sees it, the task for Germans is to develop a common national life from the hodgepodge of feudal principalities comprising the Holy Roman Empire – one whose unifying mortar would be a Christianity purged of superstition and otherworldliness. During this phase, he has two models or ideals for guiding this project: the classical Greek *polis* and Kantian morality. The distinguishing mark of the first phase is precisely Hegel’s belief that these two ideals are perfectly compatible, indeed mutually complementary. Hegel is at once a classicist and a disciple of Kant, and his first intellectual efforts consist in trying to weave these strands together to produce a design for a unified national life. What is the content of these two ideals?

Classical antiquity gives Hegel a vision of a political life in which the polity and the individual psyche complete each other as harmonious unities. In this model, the individual spontaneously devotes himself to the city’s common

life – but to a common life that is no abstract law divorced from the individual's particular interests and feelings. Rather, it is a life consisting in shared customs, national stories, and religious festivals, all of which permeate and engage the individual's sentiments and imagination.<sup>29</sup> As a consequence, there is no conflict in the individual soul between inclination and duty. The individual is joyously inclined to civic virtue because the common life is embedded in objects that engage his heart. Correlatively, the ancient *polis* knows no dichotomy between public and private life; it is rather a beautiful whole in which the two spheres interpenetrate and complement each other. So, the force of what is rationally common depends for its legitimacy on exactly what unites the private family: immemorial custom and loyal sentiment; while family feeling depends on the common civic purpose for its significance as a non-animal ethicality anticipating that purpose. As a consequence, the individual feels himself whole rather than torn. In being a citizen, he needn't renounce his individuality, and in expressing his individuality, he needn't ignore the common good.

Of course, Hegel's youthful picture of the *polis* is naïve, and he will later complicate it with an understanding of the *polis*'s tragic flaw and ultimate undoing. But he will never abandon the ideal of a political life in which there is a thoroughgoing fusion of civic virtue and self-interest, hence also of the rational and affective sides of the psyche. His mature philosophy will only deepen an understanding of what this fusion involves – not an exclusion of bifurcation and conflict but the incorporation thereof within a more comprehensive narrative of sundering and re-unification.

What does Kantian morality contribute to the model of the classical *polis*? The answer, in a word, is autonomy. To be sure, the Athenian citizen was already autonomous because the immemorial customs authoritative for him were ones he loved as enlisting his imagination and voluntary acknowledgment of their natural authority. However, in the modern world, Hegel knows, such a naïve equation of natural law with custom is no longer possible. Accordingly, what Kantian morality gives the young Hegel is the idea of the autonomous self as the criterion of valid law. Those maxims are alone unconditionally binding on the agent that are capable of a universal legislation – that all free agents would necessarily will for themselves. Laws that fail to satisfy that standard are characterized, in Hegel's early vocabulary, by “positivity.” What Hegel means by positivity can be explained as follows.

There are two senses in which a law might be positive. A law is positive if, though not deducible from any principle that is *a priori* endorsable by free beings, it is a possible application of one such principle to contingent circumstances or local needs. Being positive in that sense is no defect in law; on the contrary, the effective authority of rational law requires law to become positive in this sense. However, a law is also positive if its validity rests, not on its congruity with rational principle, but on the sheer fact that it was given by someone or something whose authority is unconditionally accepted. Such a law is not simply positive; it is infected with “positivity,” meaning that, even if its

content happens to be congruent with rational principle, its source of authority is external to the will, hence inconsistent with autonomy.

Now the young Hegel views the public law of the feudal Empire as positive in the second sense – as infected with positivity. These laws consist of the heterogeneous privileges separately won from the Emperor by individual noblemen, cities, and guilds in myriad private bargains. In virtue of these privileges, Hegel laments, the law of the constitution has disintegrated into a jumble of contracts between private parties; the public sphere is non-existent.<sup>30</sup> Feudal laws have no basis in rational principle; they can be understood only historically. Lawyers treat them as valid only because of their antiquity and because they are adhered to as a matter of fact. Yet they cannot be freely obeyed as immemorial (hence seemingly natural) custom as Greek laws were, because, though once animated by a feudal ethos supporting whatever arrangements superior power could win, they have been left for dead by the new “spirit of the world,” which demands that laws be rational, that they be based on principle and form a coherent system.<sup>31</sup>

Also positive in the pejorative sense are the dogmas of Christianity, the authority of which rests on the sheer fact that God commanded them rather than on the inward testimony of reason. Worse, they rely on the happening of events that defy reason. And the church’s moral pedagogy appeals not to the pupil’s independence of mind, as Socrates’ teaching did, but to the mind-stopping divinity of the teacher.<sup>32</sup> The upshot is that whatever religious traditions Germany has “lurk amid the common people under the name of superstition ... [the general attitude toward which] is that it is the duty of all enlightened people to extirpate them altogether.”<sup>33</sup>

Because both secular and religious law are characterized by positivity, neither can, in the young Hegel’s view, form the basis in Germany of the free patriotism he admired in the Greeks. What is needed, Hegel thinks, is that laws become ingrained custom. They must so permeate feeling that they become a second nature, obeyed in accordance with inclination rather than against it. They cannot do so, however, as long as they are positive in the defective sense, because the very nature of laws that are positive in that sense is to be imposed externally. So the political problem, as Hegel sees it, is to find or somehow introduce into Germany a body of law that both satisfies the Kantian criterion of self-impossibility and engages the sentiments and imagination of Germans.

The solution Hegel comes to is the tense combination proposed thirty years earlier by Rousseau: a civil religion of universal reason.<sup>34</sup> This would be a set of laws consistent with the Kantian standard of the self-legislating will (containing nothing that universal reason does not recognize) but specifically supportive of a German polity because inculcated by a national religion. It would thus be a *folk* religion, not a universal one, because a universal religion would depreciate the polity, hence undermine the patriotism that characterized Greek life and that Hegel wants to revive in Germany. It would, moreover, be a “subjective religion” expressed in devout feeling and practical worship rather than an

“objective religion” consisting of articles of faith that can be known or memorized and set forth in books.<sup>35</sup> But where is such a religion to be found? It would be absurd to manufacture one if what is needed is a second nature – something to take root in and educate the sentiments. And yet the only indigenous religion is Christianity, which is universalistic, subversive of patriotism, and riddled with positivity.

Accordingly, what we find in Hegel’s Bern writings is an attempt to reinterpret Christianity in Kantian terms, while ascribing its positivity to a corruption of its essence by its early adherents. Having initially attacked (in Machiavellian tropes) historical Christianity as corrosive of civic virtue, Hegel seeks (also like Machiavelli) to restore its supposedly humanist core so as to make it serviceable for virtue. The idea, apparently, is to exploit the indigeneity of Christianity while transforming it along Kantian lines so as to remove all traces of positivity and produce a creed now uniquely German for its fusion of Christ and Kant.

In short, the young Hegel’s fanciful solution to Germany’s ills is Christianity reduced to a Kantian civil religion. To that end, he drafts a *Life of Jesus*, in which (following Rousseau’s advice to the legislator to put “sublime reason[’s]” laws “into the mouth of the immortals”) he has Jesus teaching a religion of natural morality consisting of nothing but laws engraved in conscience and approved by the categorical imperative.<sup>36</sup> Echoing *Emile*’s Savoyard Vicar, Jesus urges Nicodemus (not to a non-natural rebirth but) to heed “the inner testimony of [his] own spirit,” which alone “can instruct concerning the . . . demands of reason.”<sup>37</sup> The Sermon on the Mount contains this surprising peroration: “To act only on principles that you can will to become universal laws among men . . . this is the fundamental law of morality, the sum and substance of all moral legislation and the sacred books of all peoples . . .”<sup>38</sup> Hegel’s Jesus performs no miracles. A Socratic figure, he personifies moral autonomy against the Pharisees’ slavish observance of religious laws no one knows the reason for. Like Socrates, he is condemned by the city for impiety and dies with quiet composure. There is no Easter Sunday.

Whereas the *Life of Jesus* purges Christianity of all subjection to authority, the unpublished essay on “The Positivity of the Christian Religion” tries to explain how historical Christianity came to include authoritarian elements. Here Hegel aims to show that Christianity’s positivist features – its reliance on miracles and divinization of Jesus – are historical accidents external to its essential teaching. They were, he explains, devices used by Jesus to win the minds of a servile people inured to external authority and later accentuated by disciples of mediocre intellect who, in contrast to Socrates’s students, loved the teaching because of the man, not the man because of the teaching. They have nothing to do with the essence of Christianity, which at its core (Hegel argues) is nothing but a religion of reason and natural virtue.<sup>39</sup>

The Positivity essay marks the breakdown of Hegel’s earliest project. What seems to have dawned on Hegel in writing this essay is that the two theoretical



paradigms he was trying to fuse – Athens and Kantian morality – are mutually antagonistic. This is so in two senses.

First, in the classical *polis* (or rather in the young Hegel's idealized vision of it), the individual devotes himself to the public order, not as to an abstract universal law, but through the mediating element of indigenous religious tradition and cult. It is this mediation that permits the individual's sentiments and inclinations to be engaged in public service, so that he is not bifurcated into reasonable citizen, on the one hand, and rationally self-seeking private individual, on the other. And yet the Kantian idea of moral autonomy, Hegel now thinks, rejects any such mediation. For Kant, that law is alone morally binding that every free end-in-itself would necessarily legislate for itself. But that criterion rejects not only laws that are positive in the pejorative sense – laws whose validity rests solely on their having been posited by *de facto* authority; it also expels positive law as such – laws that have a contingent, historical, and local justification. For Kant, such laws bind the individual only by virtue of a distinctively political (not moral) obligation to form a *coercive* public order – one that assumes human beings to be naturally guided (not by what all ends-in-themselves could will but) by their particular self-interest. The legal validity of this order's commands depends on the assured efficacy of the threat backing the commands (hence necessity, which declaws the threat, also removes law's special obligatory force; no court can punish the *in extremis* murderer) and not on whether all could assent to them, for the ruler's unilateral assertion of their reasonableness is irresistible.<sup>40</sup> For Kant, in other words, *all* positive law is infected with "positivity." Its authority is inherently an external one in relation to which the natural subject is heteronomous; that is why autonomy is attainable for Kant only in the sphere of morality – in a private virtue detached from the state. Just as Kant humbles theoretical reason to elevate practical reason, so does he depreciate the political and legal side of practical reason to exalt the moral side. The threat-based, authoritarian state of the doctrine of Right is a come-down from the kingdom of self-legislating ends of the *Groundwork*. It is that kingdom adapted to the natural selfishness of human beings, whereas the kingdom itself is for hypothetical beings whose wills are pure.<sup>41</sup> But this means that the project to cement a political life with an indigenous custom conformable to the Kantian ideal of autonomy was doomed from the start. There can be no such custom.

Second, Hegel comes to understand that, while his Greek and Kantian ideals are both ideals of freedom, they stand for very different conceptions of freedom. As Hegel sees it, the Athenian was free because his state was not a law opposed to his inclination and self-interest, but a common life he could love as his own. Because the *polis* engaged both his reason and his sensibility, the subject could devote himself to the common life for the sake of his own happiness. In this way, the *polis* satisfied the whole man, not simply the "pure" citizen. To the self-interested subject, therefore, the state was not necessarily or inherently an external, repressive power, though this or that individual may have felt it

as such. It was an authority that even the self-interested Athenian could feel himself autonomous in obeying.

By contrast, the Kantian moral will is free only in willing the law purely for the sake of the rule of law and never from any motive springing from inclination or self-love. Kantian morality engages only the pure will, not the sentiments, for the latter are conceived as belonging to the realm of natural causality, in which there is nothing moral. But since the pure will autocratically gives the law to the self-interested will, Kantian morality is itself, Hegel now concludes, tainted with positivity.<sup>42</sup> From the standpoint of the self-interested will, the authority of the moral law is just as external and repressive as the authority of religious law.

## 2.2 *The Frankfurt–Jena Period*

Hegel's conclusion that Kantian morality is itself infected with positivity presupposes an expanded conception of positivity – one that Hegel introduces in a section of the Positivity essay that, judging from its odd fit with the previous ones, was a late addition, probably written in Frankfurt. In this section (titled “How Christianity Conquered Paganism”), Hegel now explains Christianity's positivity as a reflex from humanity's enslavement under the Roman Empire. Pagan citizens, he says, could be satisfied with imperfect gods because “they had the eternal ... within their own hearts.”<sup>43</sup> Mocking the gods never meant mocking holiness, for the holy inhered in their relationship to the city. With the Roman republic's disintegration into egoistic persons ruled externally by despots, the political community of the pagan city became displaced onto a Christian God, “a being outside us, in whom we have no part, a being foreign to us with whom we have nothing in common.”<sup>44</sup> Hegel continues:

Thus the despotism of the Roman emperors had chased the human spirit from the earth and spread a misery which compelled men to seek and expect happiness in heaven; robbed of freedom, their spirit ... was forced to take flight to the deity. God's objectivity is a counterpart to the corruption and slavery of man.<sup>45</sup>

Here the meaning of positivity has undergone an expansion. Formerly (and in keeping with Hegel's then Kantian outlook), positivity characterized a command that claimed authority by virtue of its having proceeded from someone *de facto* accepted as an authority and irrespective of whether reason could endorse it. Now, however, positivity is a general category embracing all cases of external authority. So, positivity also characterizes an ideal unity of self and community that, as the self's potential, imposes demands on it, but that, as repelling the corrupt self's participation, rules externally and repressively. This is positivity as (what Hegel will later call) self-estrangement. The self's own ideal potential is put incommensurably beyond it, reflecting a judgment of the self's fixed unworthiness.

Analyzed under a conception of positivity that includes this phenomenon, Kantian morality – supposedly a morality of autonomy – contains a large

residue of positivity. The unity of the individual and the universal will that morality commands is presented to the natural will as an ideal incommensurably beyond it, repelling its participation; for to seek happiness in the performance of duty would destroy duty as moral. Thus the ideal rules externally and repressively. Though internalized to conscience, the lord remains a lord, and the individual, though "his own slave," is a slave nonetheless.<sup>46</sup>

Accordingly, Hegel now gives up on restoring the ethics of *polis* life on the basis of a Kantian civil religion. Athens and Kant, he now concludes, are mutually incompatible. The second phase of his development is marked, then, by a turning away from Kant and by a straightforward idealization of ancient Athens, which he now sees as harmonizing the poles of duty and inclination that Kant saw as mutually exclusive. It is also marked by a return to a non-Kantianized Christianity – not, however, to the Christianity of St. Paul and the church, but to the pristine Christianity (as Hegel believes) of its founder. The aim is still to strip Christianity of its historical accretions of positivity, but the remaining essence, Hegel now believes, is not a religion within the bounds of reason alone; it is a religion of love, in which Hegel sees a re-teaching of the ethics of *polis* life. Finally, the second phase is distinguished by the beginnings of a systematic philosophy in which *polis* life becomes the destination for the modern ego's quest for independence against natural need, moral anarchy, economic vulnerability, and authoritarian rule. For his new start Hegel's guides are Hölderlin and Schelling, but we now hear the first sounds of a distinctive voice.

The second phase begins with an unpublished essay on "The Spirit of Christianity and its Fate."<sup>47</sup> Here Kantian morality appears through a surrogate: Abraham and Judaism. What both have in common for the ex-Kantian Hegel is a "rending of life" by opposing an ideal of pure independence to natural inclination and by striving to realize the ideal by renouncing the objects of inclination. "The first act which made Abraham the progenitor of a nation," Hegel writes, "is a disavowance which snaps the bonds of communal life and love. The entirety of the relationships in which he had hitherto lived with men and nature, these beautiful relationships of his youth, he spurned."<sup>48</sup> Yet Abraham does not uproot himself in search of a new community he can regard as his own. Instead, he wanders "hither and thither" with his herds, never cultivating the earth, remaining "a stranger to the soil and to men alike."<sup>49</sup> In thus treating the "whole world...as simply his opposite" and a nullity, Abraham juxtaposes to nature an ideal of absolute independence from, and mastery of, nature incommensurably beyond him.<sup>50</sup> Relative to this ideal he too, as a natural being, is devoid of intrinsic worth; but in striving to cancel his natural self even to the extent of being ready to sacrifice his beloved son to his ideal, he actualizes that ideal's mastery and so enjoys its favor.<sup>51</sup> Repeatedly Hegel sets the stories in Genesis alongside their Greek analogues in order to draw the supposed contrast between the Jewish repudiation of love and community and the Greek quest for them.

For the twenty-eight-year-old Hegel, the whole of the Mosaic Law reflects a war of freedom against nature, and in the Mosaic Law we are meant to see also the Kantian moral law.<sup>52</sup> Both are now portrayed polemically in order to set the stage for the entrance of Jesus. Against Judaism's projection of its ideal beyond the individual, Jesus sets "the subjective in general."<sup>53</sup> No longer teaching a religion of natural morality, he preaches love and founds a community of followers bound together by friendship in the here and now. The common life of this community does not denigrate or expel particularistic self-concern; on the contrary, it defers to self-concern for its confirmation as the determinate individual's own highest good. The individual's emotional life becomes a medium for the manifestation of a common reason. Because, moreover, the common life values self-concern, the individual can happily devote himself to the community as to the source of his worth as a determinate individual. His civic-mindedness is thus ethical rather than moral. It reflects, not a strenuous, self-denying adherence to impersonal duty, but a spontaneous expression of generosity.

The Sermon on the Mount, Hegel believes, encapsulates the new human ideal. It "does not teach reverence for the law; on the contrary, it exhibits that which fulfills the law but annuls it as law, and so is something higher than obedience to law and makes law superfluous."<sup>54</sup> Here the youthful Hegel *equates* law with the positivity of an external and repressive command – a position at odds with the verse in Matthew he paraphrases and that he himself scorns in his maturity.<sup>55</sup> So, along with its externality, law itself is abolished by love even as its content is fulfilled. All positivity has gone up in incense.

There is, however, a discordant note. Already, in a fragment dated somewhat earlier than "The Spirit of Christianity," Hegel had encountered the limitations of the love-union in the persistence of an unconquerable strangeness between the lovers caused by their relation as persons to their respective possessions.<sup>56</sup> A similar caveat is sounded now. While idealizing love as the basis of a free community, the young Hegel is acutely aware of its being a quixotic ideal in a modern world of separate legal persons. He is also aware of the corrosive effect this circumstance has on the ideal itself. Even for the early Christians, love shades into its opposite. The existence of a Roman world of legal persons claiming dignity on their own and related only through the cold universality of private law forces Jesus's followers into a seclusion and world-hatred that, intended to preserve their benevolent dispositions, corrupts them.<sup>57</sup> As a consequence, their ideal undergoes a change. It is no longer the idea of an untroubled fellowship in a community they can fully participate in and bring to life in the present; for that ideal no longer responds to their reality or need. It is instead the picture of a fellowship that has been shattered by the egoism of the singular person and by the mortality that the singular person's egoism turns into a stumbling block, but that is then restored by the person's spontaneous return to a more inclusive community wherein the separate ego has an objective value that mortality cannot contradict. Their need, in other words, is for a community that submits to disruption and overcomes it.<sup>58</sup>

In the Roman Empire, however, such a community is a utopia as remote from Jesus's followers as Judaism's ideal Ego was from Abraham and his progeny. It is thus pictured by the early Christians as having been modeled by one person to the exclusion of all others, hence as an ideal person incommensurably beyond them – no longer a teacher but a “lord and master.”<sup>59</sup> The egoism redeemed by the crucified and resurrected Christ is thus left unredeemed in the world. That it *is* redeemed is now simply revealed to Christians, divorced from their own thinking and doing. For them, the ego's redemption is the opposite thereof, for it requires a self-annihilating merger with the particularity – the body – of Christ.<sup>60</sup> Only in the next world will the separate ego's worth be confirmed. Accordingly, Christianity's positivity turns out to be, not an historical accident after all, but its “fate” – the inevitable product of its juxtaposition to an antipodal world.

### 2.3 *The Modern Parallel*

What the Roman world was to the early Christians the modern world is to the young Hegel. In modernity, too, the individual lays claim to dignity, not as a member of a free community, but as an isolated person. This is a world where political association is viewed instrumentally – as a means to the protection of pre-political rights. It is thus a world where the state is seen, not as the individual's natural end, but as an artifice opposed to, and repressive of, his egocentric nature. Hegel's second phase is therefore marked also by a despondency and pessimism, as, despairing of a revival of Greek ethical life, he withdraws into reverie, longs for a Theseus, and ponders what sort of practical intervention in human affairs is possible for him.<sup>61</sup> In a draft introduction to “The German Constitution,” he laments the fate of “the man whom the time has banished to an inner world.” Such a man must either face a “lasting death” if he does nothing, or else act “to cancel the negative in the existing world,” a task far beyond any single individual.<sup>62</sup>

Lastly, the second phase is delineated by a Schelling-influenced artificiality in the way Hegel understands political life in the modern world. For Hegel, young or old, the ideal polity is not a Platonic form indifferent to whether or not it is actualized. It is an ideal whose status as a final end requires that it be confirmed as such through the spontaneous patriotism of individuals seeking their own good – that it be actual in their civic-minded actions. Now, in the course of writing the Frankfurt essay, Hegel's political ideal changed from a community united unreflectively by love to one that submits to disruption by the individual ego's claim to self-sufficiency and then is restored through the ego's return to a political community now known to be its final end. The thought here is that the political community is objectively a final end only as confirmed through the individual ego's experiencing the nemeses of its claim to self-sufficiency, so learning that its real independence lies in fulfilling a social role in a common life now grounded in the ego's educated insight and practical endorsement.

However, for the Hegel of the Frankfurt and early Jena years, this narrative of wholeness lost and regained takes on a Schellingian slant I'll call absolute humanism. In sketches and drafts of his philosophy of mind, Hegel describes a movement to a *polis* whose unity of complementary spheres exhibits an aesthetic harmony and conceptual necessity that leave no room for individual freedom. The road of sorrows leading to this *polis* has no other purpose but to vindicate to insight the absolute end-status of the *original polis*, in which "all individuality is superseded," "nothing is one's own," to whose primacy the economy is unilaterally subordinated, and to whose political class the peasantry and *bourgeoisie* are servient.<sup>63</sup> There is no reciprocal recognition by the political organism of the *separate* end-status of the individual ego; on the contrary, the organism's "rational relation" to a sphere of acquisition always tending toward independence is "subjugation," "domination."<sup>64</sup> So Hegel's ideal is still the ancient *polis*, but one to which individuals chastened by the social vulnerabilities caused by their egoism have surrendered their separate worth rather than not yet claimed it – just the sort of proto-fascist state some falsely ascribe to Hegel's mature thought.

Moreover, the political organism *opposed* to atomism is now the "Absolute" that Hegel must demonstrate as actual. To do this, however, he has to construct the existing social world as if the separate ego were unreal – a vanishing element in the "absolute life in the fatherland and for the people."<sup>65</sup> He must, in other words, construct unity and harmony in the face of bifurcation and discord, pretending that the existing state already conforms to the idea of an organic totality in which atomism and its resulting opposition of state and society have disappeared. The fact that the modern state is subordinated to the primacy of the individual is treated as a superficial appearance, as the way things look to the non-philosophic eye; the philosopher knows better. But this is dogmatically to assert a point of view and (what is worse for a would-be philosophical scientist) to falsify reality. There is a parallel here to the fate of Christianity – one that Hegel must have appreciated.<sup>66</sup> Just as the early Christians' fraternal love degenerated into world-hatred through its opposition to the Roman Empire, so the love of truth degenerates into dogmatism and untruth through its opposition to the modern world.

#### 2.4 *The Problem of Politics*

This result marks the breakdown of Hegel's second-phase project and sets the stage for the third and final phase – for his mature, published, and wholly original philosophy. The two (three if one counts as a distinct transition the Frankfurt move from love to disruption and restoration of anti-atomist totality) false starts between 1793 and 1804 helped Hegel conceive a new ideal and, with it, the problem his mature political philosophy will try to resolve.

The new ideal is the Greek *polis* filled out, not just by insight, but also by recognition of the worth claim of the separate ego – the ego set apart from the objective *polis* mind and its organic unity. It is a political organism no

longer subjugating the atomistic ego to its one-sided primacy but bowing to its independence and enveloping the institutions in which the ego's primacy is embodied. So, it is the reconciliation of opposites – objective mind's primacy, the individual ego's primacy – imagined by Christianity, but brought down to earth and conceptually understood, hence rid of positivity and heteronomy. But since no finite mind can envelop these opposed minds or harmonize this contradiction, we can say that, with this ideal, Hegel moves from the absolute humanism of his collaboration with Schelling to the rational theism of his independent philosophy.

The problem associated with the new agenda can be formulated as follows. Is there a potential in Nature for a political life that harmonizes the Greek ideal of the ethical community with modernity's separate individual personality such that Christianity's supernatural kingdom can become an earthly one? If so, under what historical conditions can the potential be fulfilled, and what role does the philosopher perform in fulfilling it? Alternatively put, what are the possibility conditions in both Nature and history for reconciling the classical idea that the human individual possesses reality and worth only as a member of a *polis* with the modern idea that the individual person is morally self-sufficient, possessing dignity apart from community? More succinctly, how can the priority of the *polis* be reconciled with the priority of the person? Moreover, since the person's priority produces the hostile opposition between civil order and human nature characteristic of modern civil society, the problem can also be formulated so: under what natural and historical conditions can the wholeness of the Athenian *polis* and of the Athenian psyche be restored from the bifurcation of modern life without doing violence to what disrupted Athenian unity – the person's claim to a dignity on its own? How can organic wholeness incorporate and satisfy that atomistic claim? Since such an incorporation would signify the earthly fulfillment of the Christian vision shorn of its supernaturalism and self-suppression, the question can lastly be put in the terms Hegel used to close his Frankfurt essay: how can “church and state, worship and life, piety and virtue, spiritual and worldly action,” merge into one?<sup>67</sup>

These are the great problems that Hegel sets out to resolve, and the rest of this book is about how he does it, the conditions for success, and the implications of failure.

## Notes

- 1 For example, Peter Steinberger, *Logic and Politics*, pp. 3–43; Fred Dallmayr, G. W. F. Hegel: *Modernity and Politics*, p. 7; Axel Honneth, *The Struggle for Recognition*, p. 5.
- 2 Alasdair McIntyre, *After Virtue*, pp. 264–78; Steven Smith, *Hegel's Critique of Liberalism*, ch. 8.
- 3 Francis Fukuyama, *The End of History and the Last Man*, pp. 57–70.
- 4 Leo Strauss, *Natural Right and History*, p. 29.

- 5 Leo Strauss, *On Tyranny*, p. 223.
- 6 Allan Bloom, "Introduction" to Alexandre Kojève, *Introduction to the Reading of Hegel*, p. xii.
- 7 Friedrich Nietzsche, *Untimely Meditations*, pp. 104–5.
- 8 Karl Marx, *Economic and Philosophic Manuscripts of 1844*, pp. 170–93.
- 9 Alexandre Kojève, *Introduction to the Reading of Hegel*, pp. 31–70. This is also Charles Taylor's view; see *Hegel and Modern Society*, pp. 122–3.
- 10 For example, by Leo Strauss, *On Tyranny*, pp. 222–3; Francis Fukuyama, *The End of History and the Last Man*, p. 64; Barry Cooper, *The End of History*, p. 122. Steven Smith, otherwise a critic of Kojève's reading, also thinks that Hegel's end of history is the post-revolutionary *bourgeois* state; see *Hegel's Critique of Liberalism*, pp. 6, 132–64, 218. So do Emil Fackenheim, *The Religious Dimension in Hegel's Thought*, pp. 232–3 and Terry Pinkard, *Hegel's Phenomenology*, p. 332.
- 11 For an extended statement of this view of Hegel's project, see Michael Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation*; cf. M. J. Inwood, *Hegel*, pp. 497, 501.
- 12 Hardimon, *Hegel's Social Philosophy*, pp. 28–29; Frederick Neuhouser, *Foundations of Hegel's Social Theory*, pp. 1–16.
- 13 Avineri, *Hegel's Theory of the Modern State*, pp. 234–8; Terry Pinkard, *Hegel's Phenomenology*, pp. 339–43.
- 14 See Marx, *Economic and Philosophic Manuscripts*, pp. 175–93 and *Critique of Hegel's 'Philosophy of Right'*, pp. 5–19; K. R. Popper, *The Open Society and its Enemies*, II, 27 f.; Sydney Hook, *From Hegel to Marx*, pp. 28–36.
- 15 See Marx, *Critique of Hegel's 'Philosophy of Right'*, pp. 25, 41, 44–45, 64, 73; Rudolf Haym, *Hegel und Seine Zeit*, pp. 357–91; Popper, *The Open Society and its Enemies*, II, 32–58; Hook, *From Hegel to Marx*, pp. 19–22.
- 16 J. N. Findlay, *The Philosophy of Hegel*, pp. 339–40; Stephen Houlgate, *An Introduction to Hegel*, pp. 209–10.
- 17 Hardimon, *Hegel's Social Philosophy*, pp. 22–23.
- 18 See Haym, *Hegel und Seine Zeit*, p. 365 ff.; L. T. Hobhouse, *The Metaphysical Theory of the State*, pp. 17–25, 71–95; E. F. Carr, *Morals and Politics*, p. 110 ff. and "Reply" in Walter Kaufmann, ed., *Hegel's Political Philosophy*, pp. 35–36; Popper, *The Open Society and its Enemies*, II, 41, 47 ff., 66 ff.; Hook, *From Hegel to Marx*, pp. 22–28 and "Hegel Rehabilitated" in Kaufmann, ed., *Hegel's Political Philosophy*, pp. 63–64.
- 19 GPR, para. 258Z: "*es ist der Gang Gottes in der Welt, daß der Staat ist.*" Walter Kaufmann challenged Knox's translation of this sentence ("the march of God in the world, that is what the state is"), suggesting "It is the way of God with the world that there should be the state." See Kaufmann, ed., *Hegel's Political Philosophy*, pp. 3–4. If Kaufmann meant to deny that Hegel regarded the state as the developing embodiment of God, his translation is airbrushing.
- 20 Marx, *Economic and Philosophic Manuscripts*, p. 183 ff.
- 21 Georg Lukács, *The Young Hegel*, pp. 398–420; Herbert Marcuse, *Reason and Revolution*, pp. 91 ff., 183; Shlomo Avineri, *Hegel's Theory of the Modern State*, pp. 94n., 98–99, 107; Raymond Plant, *Hegel*, pp. 70 ff., 76 ff.; Charles Taylor *Hegel*, pp. 73–74, 437–8; Allen Wood, *Hegel's Ethical Thought*, pp. 247–55.



- 22 See Hobhouse, *The Metaphysical Theory of the State*, pp. 26–69; Carritt, *Morals and Politics*, p. 105 ff. and “Reply,” loc. cit., p. 37 ff.; Popper, *The Open Society and its Enemies*, II, 31, 42 ff.; Marcuse *Reason and Revolution*, pp. 55–61, 169–223; Hook, “Hegel Rehabilitated,” loc. cit., pp. 60–61 and “Hegel and his Apologists,” in Kaufmann, ed., *Hegel’s Political Philosophy*, pp. 87–104.
- 23 For such an argument see Z. A. Pelczynski’s introductory essay to HPW and his “Hegel Again” in Kaufmann, ed., *Hegel’s Political Philosophy*, pp. 80–86.
- 24 Lukács, *The Young Hegel*; Axel Honneth, *The Struggle for Recognition*, pp. 5–63. For thorough treatments of the young Hegel, see H. S. Harris, *Hegel’s Development: Toward the Sunlight*, Joshua Goldstein, *Hegel’s Idea of the Good Life*, pp. 3–117; Plant, *Hegel*, pp. 15–75.
- 25 “Tübingen Essay,” trans. H. S. Harris, in MW, pp. 48, 53. Contrast SL, pp. 7–8.
- 26 See Taylor, *Hegel*, pp. 3–50.
- 27 “Tübingen Essay,” MW, p. 67: “Folk religion, which generates and [nurtures] noble dispositions, goes hand in hand with freedom. [But] our religion aims to educate men to be citizens of heaven, whose gaze is ever directed thither, so that human feelings become alien to them. At our greatest public festival, one draws near to enjoy the heavenly gifts in a garb of mourning and with lowered gaze ... whereas the Greeks with the friendly gifts of nature, crowned with flowers and arrayed in joyful colors, radiating gaiety from open faces that invited all to love and friendship, approached the altars of their benevolent gods.”
- 28 HPW, p. 221.
- 29 “Tübingen Essay,” MW, pp. 67–69.
- 30 “The German Constitution,” in HPW, p. 150: “The German political edifice is nothing other than the sum of the rights which the individual parts have extracted from the whole, and this justice, which watches carefully to ensure that no power remains in the hands of the state, is the essence of the constitution.”
- 31 HPW, pp. 146–8.
- 32 Hegel, “Berne Fragments” in P. Fuss and J. Dobbins, ed. and trans., *Three Essays*, 1793–5, pp. 62–63.
- 33 ETW, p. 147.
- 34 MW, pp. 60–71; cf. J.-J. Rousseau, *The Social Contract*, trans. G. D. H. Cole, pp. 110–4.
- 35 MW, pp. 47–52.
- 36 J.-J. Rousseau, *The Social Contract*, p. 34.
- 37 MW, p. 108; cf. J.-J. Rousseau, *Émile*, trans. Barbara Foxley, pp. 249–50.
- 38 MW, pp. 115–6.
- 39 ETW, pp. 75–86.
- 40 MM, 6:235–6:236, 6:319–6:320.
- 41 GMM, 4:433–4:435.
- 42 ETW, pp. 211–4.
- 43 ETW, p. 157.
- 44 ETW, p. 160.
- 45 ETW, pp. 162–3.
- 46 ETW, p. 211.
- 47 ETW, pp. 182–301.
- 48 ETW, p. 185.

- 49 ETW, p. 186.
- 50 ETW, p. 187.
- 51 ETW, p. 187.
- 52 Had Hegel published this essay, his readers would also have made the correlative association, giving his critique of Kant a rhetorical boost. Though virulent, Hegel's anti-Judaism did not outlast his youth; see PH, pp. 321–2.
- 53 ETW, p. 209.
- 54 ETW, p. 212.
- 55 Preface to PR, pp. 9–10.
- 56 ETW, p. 308.
- 57 ETW, pp. 281, 286, 288.
- 58 ETW, pp. 292–3.
- 59 ETW, p. 294.
- 60 ETW, pp. 300–1.
- 61 HPW, p. 241; Letter to Schelling, *Briefe*, I, 59 f.
- 62 Sch&Ent, p. 16; *Werke*, I, 457.
- 63 SE, pp. 147, 152–6, 158; NL, p. 93 ff.
- 64 NL, pp. 93, 94. Thus, Honneth's thesis that Hegel moves from an early position of strong intersubjectivism to a later conception of ethical life “purged...of all intersubjectivity” has it exactly backwards; see *The Struggle for Recognition*, p. 60. For an extended demonstration that the theme of mutual recognition continues into Hegel's mature ethics, see Robert Williams, *Hegel's Ethic of Recognition*; cf. Robert Pippin, *Hegel's Practical Philosophy*, pp. 184–5. As strained as Honneth's contrast of a young, intersubjectivist Hegel to a later defender of an authoritarian state is his reading of all cases of intersubjectivity in the 1821 *Philosophy of Right* as the youthful, anti-atomist Hegel's poking through the constraints of the later system; see *The Pathologies of Individual Freedom*, pp. 8, 13–14, 18.
- 65 *SysSitt*, p. 328.
- 66 He explicitly draws the parallel near the end of his life; see *Werke*, XVII, 342–4.
- 67 ETW, p. 301.

## PART I

### THE CIRCULARITY PROBLEM



# I

## The Limit of Cognition

Knowledge is aware not only of itself but also of the negative of itself, or its limit.  
Knowing its limit means knowing how to sacrifice itself.

*Phän*, p. 529 (Phen, p. 492)

In this chapter we climb to the standpoint of Hegel's system of knowledge by following his critique of rival standpoints – particularly those of Kant, Fichte, and Schelling. The chapter has three aims. One is to bring into view Hegel's idea of Spirit, which is his conception of the law of reality, the structure of whatever has a necessary and stable existence and a universal and objective importance. Another is to elucidate the crucial role that a perfectly just state performs in making possible Hegel's knowledge of reality in terms of Spirit. The chapter's third aim is to disclose the limit philosophy encounters in converting to knowledge its conviction that Spirit is the law of reality. This will move us toward understanding the role Hegel means the *Phenomenology of Spirit* to play in bringing political life to justice and philosophy to science.

### 1 Philosophy's Aim

Hegel defines philosophy as that mode of the “thinking consideration of things” which seeks to comprehend through concepts.<sup>1</sup> Obviously, thinking about things is not peculiar to philosophy. As the faculty distinguishing human from non-human animals, thinking is the possibility condition of every distinctively human activity – of business, law, politics, morality, art, and religion – all of which can and do exist nicely without philosophy. In each of these practices, thinking consists in a movement of consciousness away from the manifold given to sense perception to a general idea that unifies the manifold as determinations of itself. So, jurists seek a general principle that makes sense of judgments in a range of cases; professionals create codes of conduct to

guide them in situations calling for moral judgment; businesses form business plans and politicians unite around party platforms; art critics seek the theme that pulls together all the facets of the work, while religionists conceive a non-material deity reflected in the detailed order of the universe. The characteristic object of thought, non-philosophic as well as philosophic, is the universal and the whole it orders. What, then, is the specific difference of philosophy?

An initial thought is that, unlike most of the other practices just mentioned, philosophy seeks the most fundamental universal – the one that orders and unifies everything within human experience. But some artistic thought and all of religious thought does the same. Indeed, the genus “thinking consideration of things” relative to which Hegel defines philosophy’s specificity seems by its sweep to refer to kinds of thinking that might be called comprehensive – thinking that considers all things in the light of the most fundamental thing. So, what distinguishes philosophy from other kinds of comprehensive thinking?

According to Hegel, comprehensive thinking of the non-philosophic kind is the product of an alliance between thinking and sense-dependent modes of understanding. Such thinking apprehends the universal not by means of thought alone, but by a thinking still immersed in sensibility and its everyday pictures of things – the kind of thinking called intuition or imagination. And the object of intuition is correspondingly not the universal considered as a pure concept, but a presentiment of the concept – an image or a metaphor. So, in religious thought, the universal is a “Father,” the whole a connection between “Father and Son,” the conceptual unity of crime and punishment “an eye for an eye,” and so on. By contrast, says Hegel, philosophy grasps the universal by pure thinking, the object of which is a clear concept. By thinking the thoughts already latent in comprehensive imagining, philosophy transforms images and popular ideas into the pure concepts they prefigure.<sup>2</sup> Why is there a need for this?

The recasting of images into concepts constitutes for Hegel the necessary first phase of genuine knowledge or science. It is a necessary phase because only when universals are grasped thoughtfully as concepts do they become qualified to express the nature of the things they purport to explain. If they are merely intuited and pictured, they remain products of a personal or folk imagination, which can claim no superior contact with reality than the imaginings of a different folk. Michelangelo’s painting on the Sistine Chapel’s ceiling expresses his culture’s belief about the origin of humanity. As a representation of that belief, it can be judged better or worse than others – Blake’s, say; but as a representation of the origin of humanity, it can be neither better nor worse than Hesiod’s, because it takes no universally shared standpoint at which beliefs about the world can be tested by other minds raised above the particularism of folklore. Thinking pure concepts is taking such a standpoint. The motivation for taking it is itself, Hegel tells us, transcultural. It is the mind’s urge to freedom, understood as liberation from the authority of custom or shared opinion and

acceptance only of ideas whose validity enlists insightful assent.<sup>3</sup> But the intuitions in law, morality, politics, art, and religion form precisely a stock of shared opinion. Rethinking them as concepts transparent to insight is thus a labor of freedom.

Still, while raising the concept sunk in the image is essential to knowledge, it is not enough. This is so because, were philosophy to remain in a realm of pure concepts, it would, in Hegel's words, "be justly accused of formalism."<sup>4</sup> Formalism is a term of reproach for Hegel insofar as it denotes the privileging of form over matter, treating form alone as the essence of something and matter as unilaterally regulated by it – as that whose true nature consists solely in being adequate to its form. So it would be formalistic to assert (as the French Revolutionaries did) that the pure or general will is humanity's essence and that individuals are therefore truly human only as self-legislating citizens, casting aside family, profession, art, and every other source of private enjoyment. What is wrong with formalism, according to Hegel, is that it passes off conviction (that a certain concept is the essential nature of things) as knowledge. Once purified of intuition's subjectivity, the concept stands on one side and intuitions on the other. In this one-sidedness, the concept can express the truth of things only in the assurance – the say-so – of the philosopher. To convert to knowledge his conviction that a certain concept is the essence of experienced things, the philosopher must demonstrate that his concept is not idiosyncratic to him – that it is already anticipated in the public intuitions making up the human practices whose stock of opinions he initially questioned. He must, that is, seek confirmation of his certainty through an interpretive engagement with those intuitions. But this is to work out a philosophy of law, a philosophy of morality, a philosophy of politics, a philosophy of religion, and so on. Returning to the human practices whose opinions he once shook off, the philosopher must exhibit his idea as instinct in, and lending systematic unity to, the intuitions embedded in those practices. But this means that concept (form) and intuition (matter) are *mutually* regulative: the concept says what intuitions finally belong to the practice rightly understood, but intuitions say what concept can justifiably claim to organize the practice and decide at its margins what does and does not belong to it. Only at the meeting-point for this dialogue between concept and intuition does the philosopher change from someone who believes that his concept expresses the truth of things to someone who knows this. But since the aim of philosophy is knowledge, that aim can also be described, in Hegel's words, so: "to bring about the reconciliation of self-conscious Reason with existent Reason, with actuality."<sup>5</sup>

In sum, the task of philosophy as Hegel sees it is to grasp the pure concept supposedly foreshadowed in the intuitions informing various human practices and then to verify the supposition by demonstrating the concept's immanence in these practices, to which the concept now gives unity and coherence. Now, the role of political life in the success of this enterprise can be brought to light if we

inquire into the limit internal to philosophy's striving to become knowledge – to reconcile the Reason grasped by thinking with the "Reason that is existent."

## 2 Ancients and Moderns

That Hegel even recognizes such a limit might seem an odd assumption to make. It is, after all, Kant with whom we associate limits to cognition. It is he who erects a barrier between human understanding and objective reality and denies that the concepts of pure reason refer to anything real. Hegel, by contrast, is usually thought of as the Icarus of philosophers. In histories of philosophy, he is typically presented as having claimed not only that absolute knowledge is possible for a human thinker, but that his philosophy had attained it – indeed, that all other philosophies beginning with Thales were mere stepping stones to Hegel, who thus fulfills the tradition of Western philosophy, leaving nothing more to achieve beyond the further application of his idea. Moreover, this picture of Hegel is accurate. He does make these claims. So how can we sensibly inquire into Hegel's view of philosophy's limit?

That we can becomes evident once we attend to Hegel's view of the difference between ancient and modern philosophy. The source for this view is his introduction to Greek philosophy in his *Lectures on the History of Philosophy*, composed over a period stretching from 1806 to 1831. There he observes that the Greeks could philosophize with full confidence because they assumed that a thing "is as it is thought," that therefore thought and being are not separate.<sup>6</sup> For the Greeks, the universal under which thinking subsumed things was not foreign to the thing subsumed – not something artificially imposed by the thinker; rather, it was the thing's own immanent end, that through which it first became what it really is. So, Aristotle famously says that the *polis* is logically prior to the human individual, for only as a *member* of a civic body does the individual become fully human.<sup>7</sup> Of course, the union of particulars under a universal now stood on one side of a divide between union and atomism (as I'll call non-union or the manifold); for in bending the manifold to a universal, unification alters things and so engenders the thought of the manifold unbent. Still, the one-sidedness of union caused Greek philosophers no concern about the naturalness of union precisely because they identified a thing's real existence with its subsumed existence. Outside or separate from the union, the thing lacked being or dignity. A "man" without a *polis* is not a man but a beast; residents of the *polis* considered unfit for public deliberation lacked full humanity and so could be subordinated to the use and leisure of citizens. So, the identity of thought and reality was presupposed, and this identity entailed a depreciated other – the unmediated singular. Since the singular was thereby excluded from reality, it could pose no obstacle to the philosophic ambition to know reality by means of concepts. What the concept did not envelop was not real. It was just the shadow cast by an object illumined by its ideal type. Consequently, we find no yearning in the Greeks to comprehend the



singular – to know the cause or reason for it – hence no regarding as a limit philosophy's inability to do so.<sup>8</sup>

It is otherwise with the moderns. For us, the distinction between union and atomism is a distinction between thought and reality (nature). It is therefore a distinction that thinking must somehow encompass if it is to know things as they are. The turning-point, according to Hegel, is the advent of Christianity. That religion expressed a confidence lacking even to Greek philosophy – namely, that the human individual in its unreduced singularity is bound up with the concept that orders the universe, in the immortality of which it therefore shares. For modern philosophy, Hegel says, this confidence is starting point. It is the intuition that modern philosophers from Descartes to Hegel strive to recast in conceptual terms and elaborate in philosophical systems. Henceforth philosophy might debunk the supernatural imagery by which religion represents the reconciliation of opposites. It never, Hegel says, doubts the truth of the content, which it tries to put in a form transparent to insight and compatible with freedom.<sup>9</sup>

In carrying out this enterprise, however, modern philosophy encounters a limit. It does so because a philosophy that, on the one hand, equates the distinction between union and atomism with one between thought and reality and, on the other, seeks to envelop the distinction within a bipolar *concept* (such as Spinoza's Substance, whose essence *qua* self-caused is said to involve existence and of which thought and extension are thus co-essential attributes) ends up dissolving the distinction it wants to envelop, thereby revealing its concept as one-sided – an external imposition. How, after all, can a concept, even a bipolar one, embrace the unreduced singular without once again reducing it? Philosophy might, to be sure, simply deny that its concept leaves a residue. It might insist that the distinction between union and atomism is fully contained within its double-sided concept and try to vindicate that concept as the true nature of things (as that in which all things exist, as Spinoza says). But then it must do something fatal to knowledge. It must deny the thought-independent *existence* of the world, declaring that nothing that is could be otherwise (Spinoza), or that there is a sufficient reason for every fact (Leibniz), or that history is governed by a predetermined necessity (Schelling), and so on.<sup>10</sup> And then it must call everyone else's contrary experience of the world – of randomness, indeterminacy, and free will – an illusion. It must, in other words, dogmatically assert a point of view.

Many have accused Hegel of just the sort of reductionism and contingency-denial he criticizes in Spinoza and Schelling. To Marx, Kierkegaard, Adorno, and Derrida, Hegel's philosophy is the *reductio ad absurdum* of rationalist attempts exhaustively to grasp the world in terms of a concept; for, they say, it subdues singularity to system, subsumes real-life conflicts in logical complementarities, and raises historically contingent features of the modern world to eternal necessities. Such charges must be taken seriously and tested by an open-minded reading of the *Phenomenology of Spirit* and the *Philosophy of Right*.

But their validity is rendered *prima facie* suspect by Hegel's awareness (evidenced by his critique of Schelling) of the pitfalls of a one-sided rationalism and by his insistence that philosophy "must give the separation into subject and object its due."<sup>11</sup> That is, philosophic thought (the subject) must respect the thought-independent existence of the world (the object), and that requirement poses a limit to what a philosophical rationalism can achieve on its own. Hegel is so far from denying this limit as to be probably the first philosopher to advocate what we might now call a phenomenological surrender to it – a non-judgmental understanding of phenomena in their own terms, in accordance with their own internal coherence and dynamism.<sup>12</sup> What he does deny, however, is that this limit necessarily poses an impasse for rationalism. Philosophic thought can, Hegel believes, both defer to the thought-independent existence of the world and demonstrate Reason's governance of the world. It can therefore avoid a choice between a rationalism that denies contingency and free will, on the one hand, and a fidelity to existence that gives up on Reason's rule, on the other. This is the claim that will occupy us in the rest of this chapter. Specifically, our problem is to determine the conditions under which the material world can simultaneously be and not be a limit to philosophy's vindication of Reason's rule. As we'll see, this question ultimately concerns the inherent potential of political life and the relation thereto of the actual state.

### 3 The Limit of the Understanding

We can best approach our question by considering Hegel's critique of the standpoint at which cognition's limit is also an impasse. This is the standpoint Hegel calls the understanding, by which term he designates a larger set than did Locke, Hume, and Kant. Like them, he uses the term to denote the way thinking orients itself to the world in everyday life and in the empirical sciences. But unlike them, he also uses it to denote the way modern philosophy orients itself to the world to the extent that it uncritically accepts the epistemological assumptions of everyday thinking. This means that, for Hegel, all modern philosophy from Descartes to Kant thinks at the standpoint of the understanding.

#### 3.1 *Pre-Kantian Philosophies of the Understanding*

A philosophy that uncritically accepts the unexamined assumptions of everyday thinking Hegel calls a philosophy of the understanding. To philosophize at this level is to encounter in the difference between thought and reality, subject and object, an insuperable barrier to the knowledge of reality. We will see why when we consider the understanding in relation to sense-experience.

Hegel draws a distinction within sense-experience between sense-consciousness and sense-perception.<sup>13</sup> Both assume that they apprehend objects passively and directly, without mediation by consciousness, but the object for sense-consciousness differs from the object for perception. Whereas

the object correlative to sense-consciousness is the absolutely immediate, abstractly particular “this” (which slips away as soon as indicated by the general term “this”), the object correlative to perception is the combination of sensuous properties making up this “thing” – this chair, this table, and so forth. Perception is thus incipiently a way of understanding – of “standing” a manifold “under” a unifier. Here the manifold is the plurality of sensuous qualities – white, cubical, sweet; the unity is the mysterious medium wherein the qualities somehow co-exist as a sugar cube.

Nevertheless, understanding and perception differ in respect of the unifier by which they bring order to the manifold. Whereas perception assumes that things are cognizable as bundles of sensuous properties (and so becomes confused when the properties supposedly distinguishing one thing from another turn out to be universals describing many things or when the medium alternatively said to define the thing turns out to be an indeterminate togetherness characteristic of everything), understanding subsumes them to non-sensuous universals – laws of force and causality – “seen” only by the mind. This difference in their ways of ordering reflects a difference in assumptions about what is and is not real – in their tacit ontologies or beliefs about being. In common with sense-consciousness, perception regards objects as presenting themselves within sensory experience as they independently are. It is naively certain of the consciousness-independent reality of what it sees and hears, oblivious to the representing role that consciousness plays in the *act* of perception. By contrast, understanding is skeptical of sense-experience, for it knows that objects change into subjective and variable impressions of objects or into the common illusions (the sun moving across the sky, the earth’s flatness, etc.) caused by the physical limitations of sensory experience. For understanding, objects come to their knowable reality only as mediated by an impersonal and non-physical object of thought – a law.<sup>14</sup> In that sense, understanding is incipiently idealist.

But only incipiently. While rejecting perception’s certainty as to the objective reality of what it perceives, understanding nevertheless shares perception’s “realist” criterion of a true apprehension of reality. In common with sense-experience generally, understanding takes objective reality to be something externally given and indifferent to consciousness; and it takes consciousness to be detached from, passive toward, and non-essential to reality. So, consciousness and reality are not simply distinct for the understanding; they are mutually external – unconnected. Reality is given to consciousness, which has no part in it, and which must self-effacingly reflect it, as a mirror reflects an external light. Of course, we see this conception of reality in standard accounts of scientific method. Hypotheses are formed from the observation of “data” and then tested by the controlled induction of further data. The criterion for the truth of the hypothesis is its correspondence with what is externally given. Because, moreover, reality is taken to lie outside consciousness, any contribution consciousness (for example, an experimenter) makes to the object in apprehending

it is viewed as a contamination of the object – something to be subtracted from the object as it exists in itself. If subtraction is impossible, this is a reason for endemic uncertainty about reality.

The self-effacement of consciousness in understanding looks like humility, but it is really an inverse conceit. This is so because, to think of objective reality as independent of consciousness just because it must be independent of this or that individual consciousness is tacitly to grant the natural individual a primary, fixed, and absolute reality. By the *natural* individual I mean the one who exists evanescently by an accident of birth.<sup>15</sup> To this individual, objective reality is pre-given and indifferent, for it is already there when the individual comes into existence and abides after it has gone. So, to think that objective reality is externally given and indifferent to consciousness as such is to allow the natural individual to determine the nature of reality even though its own claim to stable reality has yet to be examined. To say that, as reality is for the natural individual (pre-given, indifferent), so reality is for consciousness simply, is to fix into eternity the natural individual by assumption. Figuratively, that equation stands to epistemology as the Ptolemaic view of the universe stands to astronomy, for it places the finite individual at the center of being. Moreover, in that the understanding assumes the natural individual's fixed reality, its critique of sense perception's naiveté concerning the reality of what is unmediated by thought is half-hearted. It too assumes the reality of the immediately existing individual, whose outlook on the world it considers authoritative. While distinguishing between reality and reality as it *looks* to sense-perception, understanding nevertheless equates the idea of objective reality with objective reality as the natural individual must conceive it. From now on, I'll call the consciousness that unreflectively ascribes ontological stability to the natural individual (and that thus takes reality as it appears to this individual for reality simply) *natural consciousness*.

The belief that consciousness and reality are mutually external defeats all efforts by philosophies of the understanding to attain knowledge of reality. There are, for Hegel, two kinds of philosophy wholly immersed in the outlook of the understanding. One is the pre-Kantian rationalism of Descartes, Spinoza, and Leibniz; the other is the empiricism of Locke, Berkeley, and Hume. The pre-Kantian rationalists said that the concept – God, Substance, or Nature – connecting mind and matter is independent of our understanding, whose arguments and proofs for its cosmic authority were of no concern to it. The empiricists disagreed, saying that the supposedly autonomous concepts to which the rationalists bowed were really generalizations formed inductively by the understanding from sensory information given from without. So, both agreed that reality is externally given to the understanding subject; the dispute was over which side of the divide between reality and subject ideas inhabit, hence over how to picture the reality given to consciousness. For the rationalists, reality was a cosmic order (henceforth Reality); for the empiricists, it was an unformed matter.

Given agreement on the divide, however, the concept by which the subject seeks to understand collapses into the common opinions it is supposed to clarify and sift no matter where it lies. In pre-Kantian rationalism, this reversal occurs because expounding Reality (God, Substance, Nature) in a system of thought involves a philosophizing subject, who, having initially been denied participation in Reality, lacked a method fixed by the Reality for disciplining his thinking – for certifying that the concepts he deploys are qualified to express the nature of things. As a consequence, Reality became contaminated with images drawn from popular opinion, with categories employed in everyday thinking, and with pseudo-proofs already contained in the definitions and axioms posited at the beginning of demonstrations.<sup>16</sup> So, for example, Descartes infers the existence of God from the popular idea of His perfection and with this unity in God of concept and existence bridges the gulf between thought and extension. A conception belonging to ordinary consciousness is thus projected onto a Reality that is supposed to exist apart from consciousness. For Spinoza, the gulf between thought and extension disappears in the one Substance, the proof of whose cosmic governance is over in the definitions stipulated and in the axioms posited at the commencement of the *Ethics*. In both cases, knowledge of Reality becomes Reality's entanglement in the unvetted ideas of the one who seeks to know.<sup>17</sup>

In pre-Kantian rationalism, the subject pole of knowledge contaminated the concept because the subject was identified with a natural consciousness whose mind was perforce excluded from the concept, yet was inevitably brought into contact with it in philosophizing. If, however, the subject is conceived as a *human* rather than an individual mind, then the interaction between concept and subject involved in understanding can be an inward connection between the species mind and the individual who thinks species thoughts – the scientist or philosopher. Accordingly, by synthesizing the extremes (concept and subject) brought together by pre-Kantian rationalism, philosophy shifts the concept from the object side of the realist divide to the subject side. It thereby becomes empiricism, which Hegel sees as a partial liberation from the external object's authority for cognition foreshadowing Kant's. Whereas pre-Kantian rationalism put the concepts that order the world far away from the subject, empiricism taught that "man must see for himself, must know himself to be present in whatever he has to accept as valid for his knowledge."<sup>18</sup>

When set within the epistemological framework of passive subject and externally given reality, empiricism's declaration of freedom yielded the doctrine that concepts are constructions of the human mind, formed from sensory data received from outside. Of course, this doctrine too must end in the relativization of knowledge; for in removing concepts from the object to the subject side of the realist schism, empiricism moved them to just the side that understanding takes to be detached from reality. Here, therefore, the relativization of knowledge occurs through the concept's reduction to human artifice and convention. So, Locke says that ideas are either (depending on whether they are simple or

complex) imported into or constructed by the mind from sensory experience, not originally implanted in it by nature. Though he still insists on the correspondence of ideas to reality, this faith hangs by the thread of a hypothesis inconsistent with his empiricism – namely, that unknown substances underlie the qualities given in sensation.<sup>19</sup> The process whereby the human subject claims all ideas for itself is also one whereby these ideas become human conventions to which no reality corresponds. If there is nothing on the object side but sensory information, then, as Hume argued, there is no warrant in reality for the necessary connections supposedly discovered by science. They are constructions of the mind whereby repetitive associations are raised by habit and custom to causal necessity.<sup>20</sup> But if there are no laws in reality, then there can be no knowledge of reality in terms of universal laws.

In Hume's self-consistent empiricism, therefore, the human understanding is aware that it can produce only opinions. Whereas, Hegel says, rationalism could still believe that "reflection was the means by which to ascertain the truth and bring objects before consciousness as they really are," empiricism thinks that reflection can only embellish reality by reading in laws that aren't there.<sup>21</sup> However, in acknowledging its limit, the understanding also insists that this limit circumscribes knowledge as such. For empiricism, the understanding's limit is cognition's limit because, taking natural consciousness as fixed, it knows no cognitive outlook other than the realist one. And yet, in saying that the concepts supposedly ordering the manifold originate in a *species* subject instinct in the individual, empiricism, according to Hegel, had itself already intimated a standpoint free of natural consciousness's limitations. What is required to reach this standpoint is just to develop the implications of Hume's insight that a species subject is self-active in understanding – that it spontaneously contributes lawfulness to natural consciousness's experience of the world.

One such implication is that a reality represented in consciousness is not necessarily an individual or private reality that a conception of objective reality must expel. There is now known to be a public reality on the subject side of the realist divide; and *this* public reality does not recoil from the individual thinker as the external one did, but rather expresses itself through him insofar as he thinks public thoughts. The thinker, one might say, is now a citizen in the republic of truth. Further, the realist assumption that consciousness is entirely passive in experience can no longer be maintained. Human consciousness, it is now understood, is an active unifier of data, and if that is so, why should we think that its productivity is manifested only in conceptual understanding? Why not in representation more generally? And so we come to the thought that the concepts of the understanding never order anything that consciousness has not already intuitively ordered in sensory experience – has not already prepared for conceptual unification. This means, *contra* Hume, that the structures supplied by the understanding are not conventions in relation to a sensible reality devoid of structure; they are rather the culmination in thinking of an ordering already implicitly occurring in sense-perception. There is thus a

unity within human consciousness of thought and sensible objects as perceived. A distinction between thought and reality (subject and object) exists within human consciousness itself, and in this location the distinction falls within a unity or whole.

Hegel calls the unity within human consciousness of subject and object “self-consciousness.” Many of his most famous critics (Marx, Kierkegaard, Adorno, and Derrida, for example) take this to be his fundamental idea, and their critiques of Hegel are basically critiques of the one-sidedness of this idea vis-à-vis the object (life, singularity) distinct from self-consciousness.<sup>22</sup> As we’ll see, however, self-consciousness is not Hegel’s final stop; he himself criticized this idea as a ground, criterion, or law of reality and moved forward to the idea of Spirit. He also criticized those of his contemporaries – Fichte and Schelling – who elaborated philosophical sciences based on self-consciousness. So the above-named critics attacked a straw-man, failed to engage with Hegel’s final idea, and took up the banner of the equally one-sided principle that self-consciousness fails to encompass.

Let us, however, pause at the standpoint of self-consciousness and consider what possibilities for knowledge it opens up that were unavailable to the understanding. Can the new standpoint soar above the limits of the understanding or must it be dragged down by them? Or perhaps there is a third possibility – that the new standpoint can free itself of the understanding’s limitations but find itself encumbered by a limit of its own.

### 3.2 The Structure of Self-Consciousness

To grasp the nature of self-consciousness, try an exercise to which Fichte is reported to have urged his students. Think the wall. Now think him who thought the wall. More generally, distance yourself from your conscious experience of the world and make that consciousness the object of your consciousness. When we do this, we discover another world – a second-order world – that (unlike the first-order world given to consciousness) is not given to us *ab extra* nor indifferent to the ways whereby we order it. Self-consciousness is another *world* in that it contains a distinction between subject and object as robust as that which obtains at the level of natural consciousness (it is not a subject withdrawn into itself from an object); and, what is more, it has the world *as experienced* by natural consciousness for its own object. Self-consciousness is, however, *another* world because, in contrast to the subject-object distinction drawn by natural consciousness, this one falls within the unity of self-consciousness. Here, in other words, there is a distinction without a schism. In reflecting on my first-order experience of the world, I create a division between a subject and an object of consciousness, but the division is between two sides of one continuous self. So self-consciousness, we can say, is a unity-in-difference of subject and object – a unity that encompasses this distinction. Or it is a unity that is in its nature *dialectical* – enveloping rather than repelling distinction. But this means that, at the level of self-consciousness, the object-world is not

externally given or indifferent to the subject, nor is the subject detached from and merely passive toward the object-world. On the contrary, the subject engenders the object-world in making it an object of reflection, and the object-world correlatively owes its reality to the subject. Its reality, we can say, is reality *for* a subject.

As a unity-in-difference of subject and object, self-consciousness is also a unity-in-difference of the universal (species) subject and the particular (individual) subject. This is so because when I reflect on my conscious experience, the I on the subject side of reflection is just the capacity for reflection or self-duplication that belongs to everyone who can say "I" – to every self-consciousness. It is therefore a generic or species I empty of everything peculiar to me – indeed, empty, period. By contrast, the I who is the object of reflection is this particular consciousness of the world – the determinate I in whose consciousness there is a plenitude of content. Hegel expresses this unity of differences in the following way:

When I say "I," I mean myself as this singular, quite determinate person. But when I say "I," I do not in fact express anything particular about myself. Anyone else is also "I," and although in calling myself "I," I certainly mean me, this single [person], what I say is still something completely universal... Thus, "I" is the universal, in which abstraction is made from everything particular, but in which at the same time everything is present, though veiled. It is not merely abstract universality therefore, but the universality that contains everything within itself.<sup>23</sup>

Now, recall that at the level of the understanding, the universal by which things of which we are conscious (representations) are understood and the particular representations that are the object of understanding stood on opposite sides of the realist gulf between subject and object. Either the universal was the object side of the schism and the particular representation the subject side (pre-Kantian rationalism), or the particular representation was the object side and the universals of the understanding the subject side (empiricism). In either case, the rift between the universal and the particular thwarted the knowledge-seeker. In the first, the thinker's opinions contaminated the universal he expounded; in the second, the universal corresponded to nothing in reality.

In the second-order world of self-consciousness, however, matters stand differently. Here the universal and the particular are connected within the continuity between the species I who reflects and the determinate I whose experience is the object of reflection. They are two poles of one self-consciousness. Accordingly, if we bracket the first-order world apprehended by natural consciousness and pretend for a moment that the second-order world is *the* world, then the impasse the understanding reached in trying to know the world disappears. Since particular representations fall within the unity of self-consciousness, they are already incipiently ordered in sense experience prior to their explicit unification by thinking. So unity is not something invented by thought. Because, moreover, the representations that are the object of reflection owe their reality



to the universal self that engenders an object-world in distancing itself therefrom, subsuming them to universals is grasping them as they really are.

Hegel calls the dialectical unity of self-consciousness the Notion or Concept (*Begriff*). Corresponding to the Platonic *eidos*, the notion of a thing is the thing's essential nature or excellence – that in conformity to which it becomes what it truly is. As the crucible in which all things come to their reality through being ordered to a universal, self-consciousness is the possibility condition of each universal's (for example, man, state) designating a notion or excellence. Hence it is *the* Notion – the archetype of notions. A philosopher who took the Notion as the ground of reality would try to vindicate it as such by exhibiting its structure of unity-in-difference in the manifold phenomena of the experienced world. He would do this in order to transform his conviction that the Notion is the ground of reality into knowledge. But in contrast to the pre-Kantian rationalists, the philosopher would not be a detached subject contemplating an external Object his activity could only contaminate. Rather, his activity would now be the “self-thinking Notion” – the conduit or vehicle through which the Notion comes to know itself as the deep structure of everything.<sup>24</sup> Because, in other words, self-consciousness is itself (on this view) the ground of reality, the philosopher's disciplined thinking would be self-consciousness knowing itself as the ground of reality; and this would be the fulfillment of the ordering of the manifold that goes on unconsciously in all cognition from sensation to scientific understanding.

Now let us come back to earth. What I have so far called the second-order world is only *one* world, and the philosopher cannot simply assert it to be *the* world, while treating as non-existent or illusory the first-order world as it exists in its own right. That would be to reduce the first-order world to the second-order world by fiat. Still, now that we know that there is such a world, our view concerning the limit of cognition must change. That limit cannot be equated with the understanding's limit, for we now know that there is a vantage-point transcending the understanding (for which the understanding is itself an object) – one at which the realist rift between subject and object and between the universal and the particular does not exist. That vantage-point is what German Idealism from Kant to Hegel calls reason, which it distinguishes from the understanding's ordering of sense-data independently given to it. So, if there is a limit to philosophy's capacity to become knowledge, that limit must be a limit of pure reason.

#### 4 Toward the Ground of Knowledge

One famous theory of reason's limit is Kant's. In *The Critique of Pure Reason*, Kant seeks to show that speculative (sense-independent theoretical) reason is incapable of demonstrating any reality corresponding to the ideas it thinks at the transcendental standpoint. More specifically, he aims to account for the human mind's striving for a scientific metaphysics but also to explain why,

despite that ambition's origin in the mind's constitution, thinking can never fulfill it. In its theoretical (though not in its practical) employment, sense-independent reason has for Kant a non-worldly sphere of relevance: all its productive labors are introspective. Thus it has achieved success in elucidating the rules of thought (logic), in deducing the properties of objects produced by thought (mathematics), and in devising methods for eliciting laws from nature (pure natural science). By contrast, all its attempts to understand the world have been fruitless.<sup>25</sup> In his first great work, Kant undertakes to explain why failure was inevitable through yet another instance of pure reason's introspective employment: an investigation of the faculty of knowing with a view to discovering what it can and cannot accomplish. This inquiry will show that the limit to knowledge of real objects encountered at the transcendental standpoint is no less an impasse than the one reached by the understanding.

To understand how Hegel conceives the limit of cognition, we must first understand why Kant's theory of the limit is not, in Hegel's view, the correct theory. So let's first try to state Kant's position in succinct form.<sup>26</sup>

#### 4.1 *Kant's Half-Way House*

For Hume, the fact that judgments of causal necessity have no warrant in sense-experience meant that they are unwarranted simply. From the evidence of the senses an empiricist is entitled to conclude only that the next time wood is heated to a certain temperature it will probably begin to emit light. However, Kant shows how the judgments of necessity comprising natural science and mathematics can be warranted despite being neither analytically true nor derivable *a posteriori* from experience. The proposition "at a certain temperature a combustible object will produce light" can be valid for empirical objects, even though the necessity is not empirically supported and even though the concept of light is not contained in the concept of heat because very hot objects and their associated incandescence are sensibly perceived within the same unity of self-consciousness that connects them by a law. So, while the law is not in the objects independently of our experiencing them, neither is it a fiction, for it is indeed valid for our representations of objects. This can be explained more fully as follows.

In all experience, Kant tells us, self-consciousness is partly passive and partly active. It is passive in receiving the impressions that external objects make on our sensibility and in being thus affected by those objects. Objects cause the images or sensuous intuitions by which they are represented in our perception of them.<sup>27</sup> However, self-consciousness cannot represent objects without arranging them in a certain order because, in representing them, it subsumes them to (or "apperceives" them within) its own unity.<sup>28</sup> So self-consciousness is itself the source of the order within which representations of objects always and necessarily appear. In particular, it is the source of the form of space in virtue of which objects appear outside us, occupying contiguous places in one all-encompassing universe;<sup>29</sup> of the form of time in virtue of which happenings

occur successively along a continuum (a single time) because they appear as a succession of inward states belonging to an identical subject;<sup>30</sup> and of the logical categories by which thought grasps objects already prepared for it by spatiotemporal intuition as either possible or impossible, necessary or contingent, inhering in another thing or accidental to it, cause or effect, and so forth.<sup>31</sup> By means of these concepts, self-consciousness further subdues the manifold given in sensuous intuition to the unity of its own nature, thereby both actualizing its primacy and putting interpersonally valid knowledge in the place of personal sensibility. Accordingly, far from passively deriving ideas and associations from experience, self-consciousness supplies the order, both intuitive and logical, within which objects must present themselves to human beings. The raw data of understanding is given to experience; but the form and structure are prior to experience, and so they are invariant conditions of the only experience humans can have.

In Kant's hands, his paradigm-shifting discovery of an original synthesis in self-consciousness of concepts and intuitions leads to a paradoxical result. Instead of freeing knowledge of reality from the limitations of the understanding, it seems to give arguments stronger than Hume's for theoretical restraint. Kant's discovery of a transcendental subject preceding the data of intuition produces not only a new critique of the understanding but also, based on this, a first critique of pure reason.

Let's begin with the revised critique of the understanding. Kant concurs in the result reached by Hume that the laws supposedly discovered in nature by empirical scientists are humanly constructed – that they do not describe the world as it really is. However, his reasons are different. For Kant, these laws cannot inhere in things themselves, not because there is no warrant in sense-experience for the “always” and the “necessary,” but because, as forms of experience, concepts such as causality depend for the matter they inform on mental *representations* of objects given to sensibility from without. It is true for Kant that the form of lawfulness is not derivable from experience. But that is because it is necessarily presupposed in experience as the self without whose universality we could not experience objects belonging to a public world or have interpersonal knowledge of anything. So, contrary to Hume's view, the *experienced* world is inherently lawful; it necessarily conforms to the ego's unity through which it first becomes an object of experience. Nevertheless, the lawfulness of experience remains for Kant an artificially constructed lawfulness – for the following reason.

The form of law is a form only as informing a matter; it has no separate, disembodied reality. Deduced by Kant as the possibility condition for causal judgments' referring to things, the unity of self-consciousness is not the abstract self-identity of the subject side of self-consciousness – of the “I”; it is a unity-in-difference of a subject (“I”) and an object (sensuous intuition), hence a synthetic unity of the manifold representations in consciousness. Accordingly, the unifying form depends on the matter given in sensuous intuition for its actualization

as a form; by their synthesis alone, Kant says, is knowledge produced.<sup>32</sup> With that much Hegel will agree. For Kant, however, this now means that the form of law is dependent for its actualization on altering representations in space and time of objects given to self-consciousness from outside. This is to say that the form of law depends for its actualization on appearances as distinct from things as they really are. Or, as Kant puts it, the form of law applies only to a possible experience – only to what we unities of apperception *can* experience – namely, appearances.<sup>33</sup> In short, the categories of the human understanding are valid only for “phenomena,” not for things in themselves. Their objective validity for experienced reality is, when compared with the reality that lies beyond experience, once again subjective.

When delineated this way, the limit of the understanding discloses both the origin and limit of metaphysics. It explains, that is, the human aspiration to a kind of knowledge that is not even partly dependent on experience, while at the same time revealing the narrow province of such a knowledge and showing why the urge to exceed it must be resisted.

First, the limit of the understanding explains the aspiration. Metaphysics is the quest for an unconditioned knowledge – for a knowledge that has overcome relation to a subject (opinion) and restriction to observed circumstances (qualified knowledge). Now the reason why the mind can form the idea of such a knowledge is that it has within it the form of all knowledge – the universal by virtue of which representations can be ordered to *one* self and so be objectively (in the sense of interpersonally) known. Self-consciousness is ineluctably metaphysical. It supplies *a priori* the form to which our representations are necessarily ordered. Yet that form orders only objects given in experience, and so whatever the human understanding knows, it knows relatively to its experience, hence provisionally. That force equals mass times acceleration is a proposition liable to qualification as holding for bodies moving at normally encountered speeds but not for those approaching the speed of light.

As a hybrid, therefore, of an *a priori* form of knowledge and a content dependent on experience, the human mind is awakened to the idea of a knowledge that is completely *a priori* and free of qualification – one in which the content too is independent of experience and determined solely by what is adequate or suitable to the form. And so, without considering whether it is qualified for the task, thinking *qua* pure reason (metaphysics) aspires to such a non-experiential knowledge of real beings. It takes as its objects intellectual entities (noumena) of which no sensuous experience is possible – the soul, the universe, God – and considers itself competent to expatiate on the nature of God, the origin of the universe, and the soul’s immortality, applying to these questions the method of deductive logic whereby contents are derived from, rather than adduced to, concepts. What in the empirical sciences functions only as a negative constraint on an inductive thinking oriented to the experienced world is here employed as a positive method for discovering the truths of a non-experienced world.<sup>34</sup>

If, however, Kant's new critique of the human understanding explains the lofty aspiration of metaphysics, it also admonishes metaphysics to lower its sights. Because, Kant argues, the categories of the understanding are the forms of experience, they cannot be validly applied to objects of which no experience is possible – to things-in-themselves. Doing so engenders the antinomies and conundrums whose discussion by Kant Hegel half-admired as a precursor of the critical side of his *Logic*.<sup>35</sup> Rather, reason's proper employment within the sphere of metaphysics is once again introspective. It is to form ideas of an unconditioned or absolute truth (the totality of all possible conditions given which a proposition may be said to hold without qualification) suggested by the understanding's relative truths and to show why such ideas must (for purposes of knowledge – morality is a different matter) remain useful chimeras. Whereas it is for the understanding to organize experienced objects under particular concepts, it is for pure reason to organize the understanding's concepts into determinations of a systematic whole modeling perfect intelligibility. For Kant, such a whole is a *mere* idea – one to which nothing in experience can correspond. It is not constitutive of the reality of objects but only regulative for the understanding, holding up an ideal of conceptual unity and elegance for the empirical sciences to strive for.

We can appreciate the logic internal to Kant's system of thought that drove him to set modest bounds to metaphysical cognition. The idea of a systematic unity of concepts is useless for understanding the world, argues Kant, because it is reached precisely by abstracting away from relation to a world into the inwardness of self-consciousness, wherein particular concepts are nothing but self-determinations of the most fundamental concept – the ego. Ideas of reason are but thoughts of the absolute indicated by the relative knowledge of the understanding – ideas to which the human mind is irresistibly drawn, yet in response to an urge that is purely subjective – inherent in its own constitution. Accordingly, ideas of pure reason have no role in understanding objects directly; their sole function is to model the parsimonious synthesis of concepts making up the inventory of the understanding.<sup>36</sup> For Kant, the idea of a systematic whole is a subjective idea to which no scientist can expect reality to be responsive (though morality supplies a reason for faith).

I want now to expound Hegel's argument for the thesis that the impasse into which Kant leads metaphysics is not a limit intrinsic to the standpoint of Reason, but is rather the limit of a reason still in the clutches of an empiricist understanding – still captive, that is, to the unexamined realism of everyday (natural) consciousness. This exposition will bring us closer to Hegel's own view of the limit of metaphysics.

Hegel applauds Kant's discovery of the standpoint of Reason. "It is one of the profoundest and truest insights to be found in the Critique of Reason," he writes, "that the *unity* which constitutes the *essence of the [Notion]* is recognized as the *original synthetic* unity of *apperception* ... the unity of ... self-consciousness."<sup>37</sup> In discovering an original connection in self-consciousness

of subject and object (concepts and intuitions), Kant had shown moderns the portal to the kind of authentic philosophy inaugurated by Socrates – free of the unexamined assumptions of everyday life. Nevertheless, Hegel argues, Kant himself never stepped through the portal.<sup>38</sup> Instead, he adopted uncritically the outlook of natural consciousness for which reality is externally given and thus independent of the order consciousness imposes on it. For Kant, self-consciousness is identified with the ego of each natural individual, whose fixed reality he takes for granted along with the externally given way in which reality appears to it. So the self-styled Copernicus of philosophy carries an inner Ptolemy: by equating objective reality as it appears to the natural individual with objective reality simply, he puts the natural individual at the center of being.

The perspective of natural consciousness determines the central doctrines of Kant's first Critique. Because the author of the critical philosophy accepts uncritically a non-philosophic outlook, the *a priori* form of self-consciousness still depends on a content given from without and which self-consciousness refracts. Thus, despite his own saying that form and content are mutually essential, that "Thoughts without content are empty, intuitions without concepts ... blind," Kant cannot let go of the standpoint for which the form and content of understanding fall indifferently apart.<sup>39</sup> In all apperception the ego receives something neither spatial nor temporal in itself and *imposes* these forms on it. But this means that Kant has forsaken his breakthrough insight into self-consciousness's synthesis of subject and object as necessarily framing all experience; for that insight leaves no room for an object not conditioned in some way by the framework, even if only as a "not." In ceding to such an independent object, Kant vacillates between quotidian and transcendental standpoints. At the everyday standpoint, the subject-object synthesis breaks up into the realist schism between a subjective ordering of appearances and the thing-in-itself; and though the knowledge gained at that vantage-point is confessedly opinion, still it is held to be the only available truth, while the idea of an absolute knowledge is regarded as an unreal construct. So, opinion is truth and truth opinion.<sup>40</sup>

Having allowed the unexamined standpoint of natural consciousness to relativize all understanding of objects, Kant then proceeds to allow this standpoint to dictate limits to transcendental thinking. Because he equates the object of understanding with an altered representation thereof, Kant must equate understanding the world with understanding the world as it appears to us, not as it really is. So, because he accepts the realist schism, he thinks that all understanding of the world must be a conditioned or relative knowledge. But this means that thought can grasp the unconditioned only by withdrawing from relation to a world and thinking *ideas* of the unconditioned having nothing to do with the world. Accordingly, the transcendental standpoint is not one from which to re-understand the world under whatever constraint that standpoint might autonomously disclose; it is rather one at which to gaze at

fictive ideas of reason and to engage in introspection about reason's capacities. But it is only because he accepts the understanding's realist outlook as a constant that he must reach the standpoint of reason by a flight from the world.

Hegel often praises Kant for rediscovering for modernity the Platonic distinction (reflected in the image of the divided line in Book Six of the *Republic*) between the ordinary understanding and transcendental reason.<sup>41</sup> But he also chides Kant for his weak criticism of the former standpoint – for praising the understanding with faint damns, so to speak. For Kant, the understanding is limited because in touch with appearances rather than things-in-themselves. Kant does not conclude from the relativity of the understanding that the understanding is itself an appearance – that it gives an appearance of fixity, while being really a transitory phase toward a true understanding of things as coming to their reality as mediated by concepts. He does not conclude this because he accepts unphilosophically the constancy of the realist outlook; and so he accepts as a constant the rift between order and reality that outlook forces on us. So for Kant, sensuous intuitions apprehend appearances not because things come to their reality only as understood conceptually but because they do not apprehend things in their brute immediacy – untouched by self-consciousness. For him as for empiricism, immediacy is reality. Also, the categories of the understanding are inadequate to the unconditioned, not because they (obeying formal logic's laws of non-contradiction and of the excluded middle) assume an either/or dichotomy between the infinite and the finite (or between the universal and the particular) that turns the infinite (universal) into something finite (particular), but because they are applicable only to what can be observed.<sup>42</sup> Because in all this Kant assumes natural consciousness's realist outlook, he has to reach the idea of an unconditioned knowledge by abstracting away from the subject-object relation in its entirety – by withdrawing from relation to a world into a now fictive idea of the unconditioned. But, argues Hegel, to define the unconditioned by reflex from the conditioned is really to condition it, while falsely absolutizing the conditioned.<sup>43</sup> And indeed, at the level of abstraction at which Kant encounters pure reason, the latter *is* finite, for it is confronted by a world indifferent to its ideas.

To summarize: Kant understands pure reason not in its genuine independence but only as a reflex from the realist outlook of the understanding, which outlook he assumes is a constant – something fixed and unsurpassable. The worldless formalism to which he consigns transcendental thinking is a function of his having identified understanding the world with understanding it within the realist framework. Kant denies the ideas of reason any relevance for knowing reality because he regards reality as given *ab extra* to a subject who imposes an order foreign to it. But reality appears this way only from the everyday perspective of the natural consciousness, which has thus saddled transcendental thinking with its own limitations. So Kant's critique of pure reason fails to disclose Reason's *own* limit.

Suppose we now step through the portal Kant showed us. At the transcendental standpoint, there is no thing-in-itself as Kant understood it – no unknowable object externally given to a refracting subject. This is so because self-consciousness is itself the source of an object-world confronting a subject. In distancing itself from, and reflecting on, its consciousness of its environment, the subject posits its experience of the world as an object. That object presupposes a subject for which it is an object, and the subject in turn presupposes an object from which it is distinguished as a subject. So, in self-consciousness, subject and object are distinct yet connected. Each is what it is only with the other. The thing-in-itself *is* the thing that exists for a subject. So the universal under which the subject organizes a manifold is not imposed on a manifold indifferent to the universal; rather, objects become what they really are only as mediated by the universal.

It will be objected, however, that the connection within self-consciousness between subject and object is still one-sided. After all, the object at the transcendental standpoint is *consciousness* of an object; and so self-consciousness, in positing an object within itself, perforce posits an object distinct from how consciousness experiences it. Observe, however, that not even this object is Kant's thing-in-itself; for it is not a positive something externally given to, and completely independent of, self-consciousness. Rather, it is now an abstraction *from* the self's experience of the world, hence a void that presupposes self-consciousness. What we are now speaking of, in other words, is a sheer negative. It is *not* how objects present themselves within the unity of self-consciousness; or, more simply, it is the not-self. This negative of self-consciousness looks very much like a limit to transcendental thinking disclosed at the transcendental standpoint itself. Is it, however, a barrier? Must the not-self pose an impasse to knowing reality as ordered to the Notion – to the unity-in-difference structure of self-consciousness? Must it create a rift between interpreting the humanly experienced world and knowing reality?

#### 4.2 Fichte's Bifurcated Ego

Johann Fichte saw the not-self as a barrier – a check (*Anstoss*), as he called it. For him, representation at all levels (perception, imagination, understanding, philosophy) is an activity through which self-consciousness strives to mediate the antithesis between self-determination and determination by another but without finality. Indeed, his own doctrine of science (*Wissenschaftslehre*) is just the ego's crowning awareness of both its god-like freedom and the human limits of its freedom. Again, this looks like appropriate humility, in comparison with which Hegel's claim to absolute knowledge looks like hubris. But first impressions might be misleading; the truth could be just the reverse. I'll bring Hegel's view of cognition's limit into focus by expounding his critique of Fichte's "check." This will lead us by way of Schelling to the standpoint at which the limit internal to transcendental *thinking* is no barrier to transcendental *knowledge*.



An ardent Kantian, Fichte believed that Kant had been misunderstood in his time – that he had been read as an exponent of the very realism he had sought to overturn. Fichte therefore resolved to devote his life to elaborating a Kantian system of transcendental explanation free of any ambiguity as to whether Kantianism stood for realism or idealism.<sup>44</sup> The result is an idealism more self-consistent than Kant's. Fichte crosses the threshold at which Kant stopped and looks out on the world as humanly experienced solely from the transcendental prospect. His formulation of the central question for a philosophy of knowledge reflects this transition. "What," he asks, "is the source of the system of [re]presentations accompanied by the feeling of necessity, and of this feeling of necessity itself?"<sup>45</sup> That question foregrounds the dispute between realism and idealism in which Kant took no side, having wavered between both. Idealism explains the necessity by which objects impress themselves on a consciousness that has no choice but to receive their impressions by an internal law of self-consciousness; realism explains this necessity as the effect of a thing-in-itself. Both abstract one of the two elements that are conjoined in experience – object and representing subject – and call it the sole ground of experience. What realism sees as determination by an external object, idealism sees as the ego's self-imposed limit to its independence. Neither is able to refute the other, but idealism, argues Fichte, has the advantage. It can explain sensibility's feature of necessity as well as realism can, but realism cannot explain the phenomenon of self-consciousness – the ego's capacity to observe itself and make itself double; it sees only a flat consciousness. Further, the ego's freedom can be brought to awareness, whereas the thing-in-itself is no more than an invented hypothesis which, if not *needed* to explain experience, has nothing to recommend it.<sup>46</sup> Accordingly, Fichte sets out to render realism otiose by deducing the varieties of everyday representation from the principles in accordance with which self-consciousness is by its nature constrained to act.

For Fichte as for Kant, the possibility conditions of knowledge – of things conforming to the uniformities to which the understanding subsumes them – are given *a priori* by the unity of self-consciousness. But instead of assuming from everyday experience an external source of material that the ego then spontaneously organizes in sense-intuition and understanding, Fichte seeks to derive the object in relation to which the ego is passive from the ego itself. The first condition of knowledge, he states, is that the ego become aware of itself as an absolutely original act of positing its own being – as the primordial "I am I" grounding the law of identity ( $A = A$ ) in general. As Fichte puts it, "the self posits itself and by virtue of this mere self-assertion it exists."<sup>47</sup> Here the ego is understood as abstractly self-identical – as the uniform "I" from which all differences pertaining to empirical consciousness are excluded. It is thus an ego arrived at by abstracting away from everything found in one's natural or particular consciousness until there is nothing left but the empty subject. At this limit of abstraction (for the ego cannot abstract from itself), I am (nothing but) I, and this I is prior to, or necessarily presupposed in, all knowledge of objects

in terms of uniformities. So being able to say “I am I” is the first condition of knowledge.

A second condition follows from the first. By virtue of abstracting from its particular consciousness to a uniform I prior to consciousness, the ego engenders a not-ego. In the very act of abstraction, the ego posits as an object distinct from itself that from which it abstracts. But since the ego has done this, we can say (with Fichte) that the “self posits itself as limited by the not-self.”<sup>48</sup> Or again: “Opposition in general is posited absolutely by the self.”<sup>49</sup> That is to say, the ego posits its opposite as the aspect of non-identity (difference) necessarily bound up with the first, exclusory principle of identity. And that is the second possibility condition for concepts referring to things distinct from us. The distinction between ego and not-ego originates in the ego’s becoming aware of its identity with itself and distinctiveness from an other; hence the not-ego inherently belongs to the ego.

Observe, however, that while the “ego” in not-ego denotes determination by the ego, the “not” denotes non-determination by the ego. The not-ego was generated through a movement of abstraction *from* consciousness to self-consciousness – to I am I. Negation cannot be analytically derived from affirmation (nor difference from what is empty of difference); hence it is a self-subsistent idea – a competing absolute. The not-ego is thus, as Fichte says, unconditioned or independent with respect to its form (of negativity) but conditioned or dependent with respect to its content (to what it is a negative of). Its having the form of a “not” is an independent, hence unconquerable, feature of the not-ego; but since the not-ego is coeval with the ego’s self-awareness, it depends on the ego for its specificity: Not what? Not the ego.<sup>50</sup> Moreover, if the not-ego is thus divided into independent and dependent aspects, so too, therefore, is the ego. As the determiner of the not-ego’s specific content but not of its negative form, the ego is divided into an active ego that determines and informs its other, and a passive consciousness that is determined by another. Fichte sums this up by saying: “In the ego, I oppose a divisible not-I to the divisible I.”<sup>51</sup> That is, I oppose a partly undetermined and partly determined not-ego to a partly determined (empirical, particular) and partly self-determining (pure, universal) ego. This third principle yields an explanation for the unfulfillable ambition of cognition different from Kant’s. Because the beyond of self-consciousness is originally posited by self-consciousness, the ego legitimately aspires to know real objects (not just appearances) as the way to actualize its inherent mastery of the not-ego. It cannot, however, finally gain the mastery it seeks because the beyond is no less a beyond for being self-posited.

For Fichte, the division between independent (active) and dependent (passive) aspects of the ego is a bifurcation into opposing extremes. It is not a division within an unbroken whole, for the ego is identified with an abstract point of activity *excluding* passivity. Still, this is not a bifurcation between mutually external and indifferent poles precluding relationship, for the “not” is a not-ego. Opposition lies within the ego itself, and so the ego cannot abolish

the not-ego without abolishing itself, nor can the not-ego abolish the ego that engendered it.<sup>52</sup> Each requires the other, or, as Fichte puts it, “No Thou, no I: no I, no Thou.”<sup>53</sup> For its own sake, therefore, the ego must respect the not-ego as a limit, even while asserting itself as the not-ego’s ground and origin. This means that the ego is a site for a primal mutual limitation or “synthesis” of freedom (activity) and necessity (passivity); and from that so-called synthesis Fichte claims he can deduce all representation from sense-intuition to understanding to Fichte’s own doctrine of science.<sup>54</sup> At every stage of knowing, the ego is driven by an internal lack to realize its independence by assimilating the world to its unity. However, this striving encounters a “check” posed by the not-ego, one that the ego’s own assertion of absolute priority empowers against itself. To this resistance the ego responds with a synthetic act of the “productive imagination,” which reconciles passivity to activity by representing as imbued with concepts what it involuntarily receives through sensibility.<sup>55</sup>

In perception and understanding, however, the ego is unaware of its synthetic activity. It sees itself as a merely passive observer of an external reality and as deriving universals *a posteriori* by induction from particulars. Only through a philosophic intuition that grasps its freedom does the ego become subjectively certain of its productive power in ordering the manifold under universals grounded *a priori* in the ego. Now the ego must scientifically confirm that certainty against the realist outlook of natural consciousness while also accounting from freedom’s standpoint for natural consciousness’s sense of dependence on a world not itself. This it does by writing a *Wissenschaftslehre*, which re-enacts the imagination’s synthetic activity as conforming to the laws of self-consciousness, demonstrating through a transcendental explanation of everyday mental actions the ego’s freedom in all representation. Were this account to achieve systematic finality, it would signify the pure ego’s self-knowledge as constituting the reality of things distinct from it. Systematic finality is achieved when the account circles back to the first principle (I am I) on which all explanations depend, thereby accounting for itself.<sup>56</sup>

Finality, however, is impossible. The imagination’s synthetic activity cannot, just because it is synthetic, close a circle begun from the *undifferentiated* unity of the pure ego; hence it cannot confirm the pure ego as master of reality. As a productive faculty reactive to the not-ego’s check, the imagination can only interpret the not-ego in accordance with forms, kinds, and laws; it cannot overreach and master the “not” – hence cannot *know* the not-ego. Nor, therefore, can the philosophy that derives the imagination’s synthetic productions from the original division of ego and not-ego demonstrate that these productions refer to objects as they independently are. Through the *Wissenschaftslehre*, the ego comes to know that its limit is self-imposed, and this, according to Fichte, is the highest possible confirmation of mastery the ego can attain as a knower.

As a moral doer, to be sure, the ego aims at abolishing the not-ego’s partial independence rather than accommodating it, hence at becoming an absolutely independent or boundless ego. The very alterity of the not-ego is posited as

the condition for the ego's self-realization as master of the alterity it has set up within itself. Self-realization comes from the ego's acting purely for the sake of moral principle in everything it does, subjugating ends given by inclination to the rule of human freedom. But even here alterity must remain (for the not-ego is the necessary counterpart to the ego's identity), and so the complete conquest of the not-ego can be conceived only as the goal of an endless striving for self-mastery and purity of will.<sup>57</sup> Neither in its practical nor in its theoretical orientation can the pure ego gain final confirmation for its being all reality.

It must be evident that the check to transcendental knowledge Fichte has identified is a check to transcendental knowledge conceived in a particular way – namely, as the finite human ego's striving for divinity. It is a check, in other words, to the pure ego's self-knowledge as the only reality, where the pure ego is the species "I" of *each natural individual*. Accordingly, it is still an open question whether the not-ego is an impassable barrier to transcendental knowledge as such. Certainly, it is an insuperable obstacle to the ego's enveloping all reality if the ego is the species ego of each natural individual. What at first blush looked like philosophic humility on Fichte's part now appears as a grudging acknowledgment of the fixed hindrance thwarting the natural ego's urge toward divinity, with which ambition Fichte's philosophy otherwise aligns itself. But that is neither here nor there. The important questions are whether a philosophy that thinks at the transcendental standpoint can exist apart from Fichte's individualistic idealism such that the individual ego's finitude (limitation by another) is no barrier to transcendental knowledge; and, if so, what is the limit of *that* philosophy? The possibility of an idealism free of the natural individual's limitations will come to sight if we follow Hegel's critique of Fichte.

Hegel credits Fichte with having sharpened the distinction drawn by Kant between transcendental philosophy and the ordinary understanding.<sup>58</sup> Whereas Kant's philosophy had accepted the understanding's testimony regarding the *ab extra* given-ness of objective reality, Fichte's, in positing the not-ego within the ego, rose to a standpoint from which the understanding's outlook could be relativized to the non-philosophic or natural consciousness and shown to be naive. Not the thing mediated by self-consciousness is an appearance, as Kant claimed; rather, the immediate thing believed in by the understanding is the appearance. Those who see things "realistically" are like Plato's cave-dwellers. Facing the internal wall rather than the world bathed in sunlight, they mistake the shadows cast by illuminated things for the things themselves.

Nevertheless, the central claim of Kant's first Critique – that pure reason is a subjective reason – is reaffirmed by Fichte. Indeed, Fichte seems to strengthen the claim by tying reason's limit, not to the assumed truth of realism, but to the nature of knowledge itself.<sup>59</sup> For Kant, reason's knowledge is subjective because abstracted from relation to an object – withdrawn into a world of its own ideas rather than engaged with an object-world. For Fichte, reason's knowledge is subjective because engaged with an object-world whose irreducible otherness

it must, *qua* knowledge, passively accept. What knowledge involves is a negotiation between the ego and the not-ego – a synthesis wherein the not-ego is acknowledged rather than subdued; hence it involves deference to the “not” that knowledge cannot envelop. Only in turning practical does the ego master (albeit incompletely) the “not,” for precisely then does it say (in effect) “to heck with syntheses” and seek the conquest of one extreme by the other.

Still, as Hegel argues, Fichte has followed Kant’s procedure in isolating the subject pole from the subject-object connection in self-consciousness and in equating this abstraction with the ego. Not the unity-in-difference of a universal and a particular I is called the ego but the universal alone, the pure I. The ego is thus identified with one of its dimensions – with the generic self abstracted from consciousness of a world. What then follows is that self-consciousness is split into opposing sides. Freedom and dependence now belong *respectively* to the pure I and to the particular consciousness, and they are therefore mutually exclusive. In the particular consciousness there is no independence, and in the pure ego there is no dependence. But this means that the ego whose self-consciousness of absolute freedom is the goal (culminating in Fichte’s philosophy) of all knowing and doing is a one-sided ego, for whom the other side is necessarily a check. So Fichte’s check is a consequence of his having identified self-consciousness with the pure ego. It is not a check to the philosopher’s knowing self-consciousness’s subject-object whole as the structure of reality – unless, of course, Fichte is right that there is no such whole, that self-consciousness is sundered into purely independent and purely dependent poles.

Is he right? Why does Fichte think that we can conceive an independent ego only by abstracting away from consciousness of an object-world? It must be because he equates consciousness of an object-world with the experience of being born into a pre-existing environment whose origin is a mystery, whose causal laws one’s own body obeys, and that exists independently of human agency, which it precedes by eons. But to whom is consciousness of an object-world such an experience? The answer, of course, is you and me. To the natural individual, consciousness of an object-world is consciousness of an indifferent reality into which one has simply been thrown and on which one depends even for the faculties by which one becomes aware of it. Or, as Hegel puts it, the standpoint presupposed by Fichte’s *Wissenschaftslehre* is the empirical one of every isolated individual whose “reality is the incomprehensible sphere of common actuality in which he happens to be enclosed.”<sup>60</sup> Accordingly, Fichte’s reflex grasp of freedom presupposes the outlook of the natural individual, whose fixed reality he uncritically assumes.<sup>61</sup> As with Kant, the transcendental ego is conceived atomistically as the pure ego of each naturally born individual; it does not exist independently of this individual. How reality appears to the non-philosophic consciousness is allowed to determine the philosopher’s conception of freedom. If consciousness of an object-world is a consciousness of dependence on a foreign reality, freedom must be conceived by abstracting away from consciousness into a self-identical ego. The ego’s bifurcation into

free and dependent sides then follows, along with the check to transcendental explanation in terms of freedom. Once again, therefore, critical thinking at the transcendental standpoint has been limited by everyday assumptions untested by that standpoint.

Accordingly, we can say that if Kant hesitated at the portal to the transcendental standpoint, Fichte stepped through – but only with one leg. The other remains firmly planted on the ground of natural consciousness. Hence to progress beyond Fichte's check is simply to push Kant's transcendental insight to the logical conclusion Fichte himself sought, unburdened by the assumptions of everyday consciousness. If there is a limit to transcendental thinking, that limit must be revealed at the critical standpoint; it cannot be projected onto philosophy by the natural individual's sense of its own limits, for that would be to hobble critical thought by uncritical certainties. No doubt, the philosopher is a natural individual whose limitations, even if not ascribed to knowledge of reality itself, might be thought to disqualify him from participating in it. To the divinity alone, the thought would be, belongs knowledge of reality, where "divinity" stands for an absolute or non-perspectival standpoint impossible for the human mind. But that thought too would be a prejudice, for only the transcendental standpoint can determine the qualifications for elevation to it. If that standpoint turns out to provide a role for natural consciousness, then the natural individual who disciplines his thinking by the role rationally assigned to him can transcend his natural limitations. He can become the vehicle of Reason's self-knowledge.

Let us then take the next step. In Fichte's philosophy, transcendental thinking is no longer limited by an external thing-in-itself; rather, it is now limited solely by the natural individual, whose assumed ontological stability has caused Fichte to grasp the free self in a reflexive and one-sided manner. Instead of asking what reality and importance the transcendental standpoint assigns the singular self, Fichte clings to his natural existence and, like Kant, ties self-consciousness down to it. For him, there is no ego but the species ego of the natural individual. The next step, accordingly, is to release self-consciousness from the natural individual and to allow it independently to exhibit its structure and unfold its nature. This is a move from subjective to objective idealism. With it, critical philosophy removes the natural individual from the center of reality (so fulfills Kant's Copernican revolution), but it does not *eo ipso* deprive the singular individual of rational significance or worth. What support, if any, the transcendental standpoint offers the determinate individual remains to be seen, but here is a preview. As inadequately developed by Schelling, that standpoint provides no support for the individual's separate worth; on the contrary, it leads to the philosophical and political totalitarianism that Hegel sketched in his earliest system-drafts while Schelling's disciple. Fully developed by the mature Hegel, the transcendental standpoint provides rock solid protection for the individual's separate worth, whereas natural individualism always ends in the despotism (unconstrained authority) of an abstract human essence.

#### 4.3 Schelling's Reductionism

We are now speaking of an objective self-consciousness. The philosophy through which this self-consciousness becomes aware of its world sovereignty Schelling called transcendental idealism. The latter is a species of objective idealism, of which Hegel's absolute idealism is another.<sup>62</sup> Objective idealism is not a throwback to pre-Kantian rationalism, for the objective reality is now a purposive self-consciousness rather than an impersonal Nature. As such, it can be the locus of a purpose to know its sovereignty, the fulfillment of which requires a philosopher through whose executed system of philosophy it knows. None of Kant's arguments against dogmatic metaphysics applies against objective idealism; for the philosopher through whom the objective mind becomes self-aware does not expound it using the untested categories of the ordinary understanding or the laws of formal logic that abhor a contradiction. Rather, he adheres to the distinctive logic (illustrated in Chapter 4) internal to the transcendent mind and of which the breakdown of the laws of non-contradiction and of the excluded middle are precisely the theme. If this is a backward step, it is a step toward ancient Greece – toward the *Parmenides* of Plato and the *Metaphysics* of Aristotle. As we'll see, though, it is as much a step toward modernizing the Greeks as it is toward Hellenizing modernity.

Let's examine the structure of self-consciousness as it presents itself when permitted its independence of the natural individual. Self-consciousness, we said, is a division within a continuous substance between a self that reflects on its consciousness of the world and a consciousness that is reflected upon. The self that reflects is now a fully transcendent self (not the pure self of the natural individual). Nothing theistic is yet denoted by this. Think of the academic disciplines of a university and the communities of scholars organized under them, and then imagine all these united in a federation of learned societies aimed at comprehensive knowledge – at a unified theory of nature and of the productions of the human spirit. That is the transcendent self. The consciousness reflected on is now a collective consciousness diversified into various practices – law, politics, morality, art, science, and religion – each with its inventory of intuitions about (respectively) justice, authority, the good, the beautiful, the true, and the One. As a subject-object connection, transcendent self-consciousness is not split hierarchically into purely independent (superior) and purely dependent (inferior) sides. It is rather a whole inwardly divided into equal poles each of which presupposes the other and therefore requires the other's partnership to be fully what it inherently is. Because, in other words, the subject is a subject only as distinguished from an object and the object an object only for a subject, each logically contains the other, and so each is inherently the whole formed by their mutual presupposition and interdependence. The whole is thus an interlocking of two subordinate wholes equal in status (picture the Star of David). Neither subject nor object is the absolute principle, nor are they competing absolutes. The sole absolute is the interpenetration or dialectical synthesis of both.

It follows from their presupposing each other that both poles of the subject-object connection are self-inadequate unless the other becomes its actual, complementary partner. For example, let the object be political life and let the subject be political philosophy. Political philosophy is the political knowledge (science) it aims to be only through the intuitive self-organization of political life in accordance with the intelligence brought to light by the philosopher. On its side, political life becomes what it essentially is through the philosopher's corroborated theory of its intuitive intelligence; whatever custom or institution does not cohere with the best interpretation of the state does not belong to the state. Because subject and object stand to each other as self-conscious intelligence to intuitive intelligence, transcendental idealism says that, whatever the specific object of study, thinker and object of thought stand to each other as philosopher of art and artist.<sup>63</sup> The former models what all philosophers do, the latter what the world does. But the possibility condition of *science* – of mental ideas about the world referring validly to the world – is the pre-established harmony of subject and object in transcendent self-consciousness. Because the object latently presupposes intelligence, intelligence can be confirmed as being indwelling in the object. Because intelligence presupposes an object of intelligence, the real object does not lie outside the object as theorized; rather, the real object, the thing itself, is the intellectually mediated object. The “appearance” is the immediate object – the object that vanishes in the mind's grasp of it. Or so the transcendental idealist tells us.

The standpoint we have reached is not yet Hegel's.<sup>64</sup> Transcendental idealism is the philosophy of Friedrich Schelling, Hegel's friend and collaborator until the publication in 1807 of the *Phenomenology of Spirit*, his detractor thereafter. By 1801, sixteen years before the appearance of Hegel's mature system, Schelling had already published several expositions of transcendental idealism, the last entitled (significantly, as we'll see) *My System of Philosophy*. More important, however, than Schelling's origination of transcendental idealism is that he later abandoned it. Failing in his various tries to overcome the opposition between transcendent self-consciousness (in which subject and object form interpenetrating wholes) and natural consciousness (for which subject and object fall indifferently apart), Schelling ultimately judged the problem insoluble. No philosophy whose explanatory principle is the connection in *Reason* between consciousness and self-consciousness could ever understand consciousness in its own terms, as it exists independently of idealist construction – in sum, could ever do justice to *existence*. Such a philosophy, he thought, must reduce existence to its ideal form, while dogmatically calling its unreduced form illusion or false consciousness. Accordingly, on his return after Hegel's death to academic prominence in Berlin, Schelling began treating his idealist phase as preliminary to his new “positive philosophy,” likely the earliest example of what the twentieth century would call existential phenomenology.

Schelling's disenchantment with the reductionism of his own idealism parallels Hegel's earlier dissent therefrom, though with this important distinction.



Whereas Schelling regards reductionism as intrinsic to objective idealism, Hegel views it as peculiar to Schelling's type of objective idealism.<sup>65</sup> The reductionist impasse into which Schelling leads objective idealism is a limit, Hegel argues, not to transcendental thinking as such, but to a transcendental thinking still determined as oppositional and one-sided by natural consciousness. A brief sketch of Schelling's idealism will provide context for Hegel's alternative and, finally, for his own view of cognition's limit.

For Schelling, the task of transcendental idealism is to prove that the unity-in-difference structure of self-consciousness (wherein subject and object poles notionally presuppose and complement each other) is the structure of reality – that the formal ground of knowledge is itself the substantive principle through which nature and the products of mind are to be understood.<sup>66</sup> This program calls for two interdependent sciences: a philosophy of nature and a philosophy of self-consciousness, the latter comprising (a) an account of the “epochs” or stages of consciousness (sensation, perceptual organization, conceptual understanding) and (b) an account of the will's causality in morality and the state. Together, the two sciences form the complete system through which nature becomes aware of its embeddedness in self-consciousness and self-consciousness comes to know itself as the final end of nature.

The philosophy of nature's role in this system is to demonstrate that matter, in its full independence of human purposive agency, organizes itself into ever more integrated unities-in-difference (“potencies”) that anticipate the intentional syntheses produced by intelligent beings. Put otherwise, its purpose is to show that non-intelligent nature is a pre-self, not an object externally given and alien to the self or even (solely) a Fichtean not-self. In demonstrating this, transcendental idealism opposes modernity's view of nature as a purposeless sphere of mechanistic causation indifferent to the purposive orders to which human intelligence harnesses it. Transcendental idealism does not deny the mechanistic side of nature; on the contrary, it insists upon it as that which distinguishes nature from conscious intelligence.<sup>67</sup> However, it puts mechanism into the context of a teleological narrative about the progressive integration of matter into unities-in-difference, the stages of which are light (a product of the interaction between the sun's rays and the eye's properties), magnetism, gravity, electricity, chemical reactions, and the complex animal organism. Since its aim is not to discover these syntheses, the philosophy of nature does not set itself up as a rival to the empirical sciences of nature; rather, it simply confers on the syntheses discovered by these sciences a confirmation of objective reality that (for Hume's reasons) the empirical sciences cannot provide. This it does by interpreting light, magnetism, electricity, etc., as progressively more adequate embodiments of the original synthesis of polarities in self-consciousness.

Viewed in this light, the aimless mechanism that persists in nature throughout all manifestations of unity-in-difference assumes a new significance. Rather than characterizing nature as alien to purposive intelligence, mechanism marks nature as incipiently intelligent, or in Schelling's striking phrase, as an “immature intelligence.”<sup>68</sup> Not a self-contained sphere externally given to

human selfhood, nature is rather a becoming that, failing to achieve its end of unification within its own sphere, points to the human spirit for the narrative's continuation and ultimately for its understanding of itself through Schelling's philosophy.<sup>69</sup>

As non-intelligent nature is not a self-sufficient sphere, so the philosophy of nature is not a self-sufficient discipline. Its aim, as we said, is to demonstrate the immanence in matter of the syntheses discovered by the natural sciences and, through a teleological narrative, to organize these connections into a graduated sequence. However, executing this aim requires a tall assumption on Schelling's part. It requires us to believe that the nature we naturally born egos see as given to us from *without* is in truth primordially distinguished *within* a transcendent self-consciousness; that, consequently, there is purpose in non-intelligent nature; and that, in obedience to this purpose, matter unconsciously arranges itself into a scale of synthetic unities foreshadowing the intentional ones that rational agency creates in human societies.<sup>70</sup> That matter is purposive is, within the philosophy of nature taken alone, merely asserted against atomistic physics. Notoriously, that assertion lacks matter's corroboration. Within the confines of non-intelligent nature, material bodies, even the living ones that form instinctual societies, persist in a state of atomism and mechanistic interaction, there being no consciousness of a universal end capable of unifying them.

Accordingly, a gap appears between existing nature and nature as philosophically constructed – one that, if not somehow closed, will bear mocking witness to the artificiality of idealism. The synthesis in self-consciousness of subject and object will itself have become a merely subjective synthesis distinguished from the objects – nature and consciousness – as they exist immediately, apart from idealism's fanciful constructions. If these objects are then credited with reality, then idealism will have to be abandoned for a positive description of nature and the operations of consciousness without ascription of immanent purpose; if they are denied reality, then there will be no independent object to which idealism is accountable, and so knowledge will dissolve into arbitrary interpretation. In either case, transcendental philosophy will have struck a limit – perhaps impassable – in the immediacy of natural consciousness.

The task of closing the gap between existing and ideal nature falls to the other member of Schelling's system, the *System of Transcendental Idealism*. Here the philosopher intellectually intuits an original and timeless act of self-consciousness whereby the transcendent Ego distinguishes itself from nature and sees itself progressively confirmed as nature's end – first through the unconscious productivity of sense-perception and empirical understanding and then through the conscious productivity of the intelligent will. The Ego's final self-knowledge as nature's end comes about through the philosopher's recapitulating this hitherto unconscious progress, exhibiting the various grades of consciousness and practical reason as stages in nature's self-movement toward the ideal form it has in the Ego. However, this recapitulating would presuppose

the very intellectual intuition that demands validation unless philosophy had independent proof of its intuition in a worldly phenomenon wherein matter's atomism is finally overcome in a perfect fusion of nature and intelligence.<sup>71</sup>

The decisive step toward this goal is taken when natural consciousness abstracts from the sense-dependence and passivity of its cognitive attitudes and, turning practical, intentionally molds nature to ends that the free will chooses.<sup>72</sup> Taken to its extreme, this juxtaposition of the free will to nature becomes morality as Kant understood it. Here the free will purifies itself of natural motivation, which it then seeks to displace as the determining ground of action. A moral "ought" opposes itself to a natural "is," demanding that the free will substitute the universal will (what all intelligences could will) for self-love as the motive for action; and what the universal will wills is the law under which everyone's freedom of action can co-exist.<sup>73</sup> In morality, accordingly, freedom's law aims to dominate nature's law. However, in a state ordered to the rule of freedom's law, the opposites are synthesized. State coercion turns nature's own law of self-love into a means for the realization of the moral law enjoining universal freedom. Freedom's law enlists nature's law in its repression of nature.<sup>74</sup>

For Schelling, the *Rechtsstaat* is the best *political* embodiment of the synthesis in self-consciousness of the universal and the particular ego, though not the best embodiment simply. It is the best political embodiment because here an idea of universal freedom juxtaposes itself to the individual's natural inclination to prefer himself over others and acquires the power to repress this inclination for the sake of the secure satisfaction of self-interest. So, individual self-interest is satisfied through the fulfillment of the common interest in the secure freedom to pursue satisfactions, and the common interest is satisfied through coercion's appeal to each individual's rational egoism. That is unity-in-difference. Nevertheless, the *Rechtsstaat* is not the absolutely best embodiment of unity-in-difference, precisely because it represses a nature assumed to be self-centered, whereas in transcendent self-consciousness there is no repression or domination: each pole spontaneously seeks the other for the sake of its own fulfillment. Since, moreover, the state *opposes* universal freedom to the natural will, the universal interest turns out to be the particular interest of its magistrates, the counter-restriction of whom by a popular assembly is equally necessary for freedom under impersonal law. So, instead of overcoming the mechanism of nature, the free constitution imitates it by harnessing the force of a particular interest to counteract the force of another.<sup>75</sup> Balance, however, is never assured, and, in any case, it is a simulacrum of synthetic unity, not a clear embodiment.

So, where in the world is the unity-in-difference structure of transcendent self-consciousness finally mirrored such that this structure might be confirmed as the immanent end of nature and the law of reality?

The final conquest of nature's atomism, Schelling tells us, requires a world federation of rule-of-law states, the members of which agree on the basic principles of a free constitution and pledge themselves to defend it in each state

against the tyranny of domestic rulers. Such a federation would complete for this planet the process of integration begun at the lowest stages of nature's self-organization; it would reflect perfectly the unity-in-difference structure of transcendent self-consciousness; and it would confirm the latter's practical sovereignty over the experienced world.<sup>76</sup>

There is, however, a stumbling-block. A world federation of states cannot, Schelling argues, materialize through human action intentionally aimed at it. This is so because, as an embodiment of *transcendent* self-consciousness, the required unity-in-difference of the universal (federation) and the particular (member states) must be independent of the choice of natural human beings representing actual states. It must be an objective reality that comes to be by necessity rather than by free choice. No compact can create the required harmony of universal and particular wills, for a compact presupposes the very thing that destroys harmony – namely, the primacy of the atomistic will on whose consent a federation by compact would rest. On the other hand, the free choice of states must be respected, for a world federation instituted by force would replicate rather than cure the factionalism of the separate *Rechtsstaat*. So, Schelling has a conundrum on his hands – one calling for a synthesis of necessity and freedom. As against the particular wills of states, the world federation must have the character of predetermined necessity; yet, if it is truly to harmonize the particular with the universal, the federation must also incorporate the choices of states. So, it must be both independent and inclusive of choice.<sup>77</sup> How is this possible?

A synthesis of necessity and freedom is possible, argues Schelling, only on the assumption that an objective purpose operates through human agents *unaware* of that purpose. Human beings strive to realize self-interested aims and, within their limited horizon, their choices are free. Viewed from the transcendent standpoint, however, these actions are determined by an objective process working through them.<sup>78</sup> Each contributes, in however small a way, to an “absolute synthesis of all actions” collected at the level of the human species and whose completion is the goal of history.<sup>79</sup> The myriad actions form a synthesis rather than a pointless aggregate because the reality of individual liberty requires such syntheses of sociality and self-interest, law and liberty, as make up the content of historical progress. By a rational necessity working behind the backs of seemingly free historical actors, liberty is compelled to limit itself in order to realize itself, and its full realization is a world federation of states.

The question, then, is whether the synthesis of the universal and the particular evolving unconsciously through history can realize itself automatically as a result of human actions directed toward something else. Schelling's answer is, in effect, “let's hope not.” His reconciliation of necessity and freedom requires the idea of an invisible hand operating in perpetuity. This is so because that synthesis depends on an objective purpose working by necessity through human actions *mistakenly* thought to be undetermined. It requires, in other words,

the illusion of free choice. Now what the full realization of a world federation entails is just the end of the illusion. In Schelling's words, "[were the absolute synthesis] ever completely evolved, we should recognize that everything that has come about through freedom in the course of history was governed in this whole by law, and that all actions, although they seemed to be free, were in fact necessary precisely in order to bring this whole into being."<sup>80</sup> But if this be fulfillment, then what was to have been the realization of liberty would end up as liberty's annulment, and what was to have been a synthesis of necessity and freedom would be the swallowing of freedom by necessity. Accordingly, the synthesis said to be the end of nature and the goal of history is actually a perpetual getting there.<sup>81</sup> For the sake of the unity-in-difference of the universal and the particular will, the consummation of that unity in a world federation must not come to pass. Such a union should rather be understood as the goal of an endless progress – an "article of faith" necessary to lend meaning to our everyday actions.<sup>82</sup>

This outcome spells disaster for Schelling's transcendental idealism. Damaging enough is the absurdity of a universal despotism to be shunned for the sake of an illusion of freedom, yet also to be believed in as a condition of meaning; or of a false consciousness that is at once decried and clung to. Still worse is the fact that, incapable of realization, the assumed harmony of the universal and the particular will must remain the object of a subjective intuition contradicted by factual discord. Whereas in that intuition the natural will spontaneously seeks its own realization in obedience to universal law, in actual states the natural will is a constant and the universal an external and repressive force. It was just this natural particularism that the *Philosophy of Nature* left unintegrated and whose self-integration was to have been recapitulated in the *System of Transcendental Idealism*. But now this "science" too gives up. The so-called absolute synthesis of actions is merely asserted against what philosophy must now tendentiously call the "appearance" of free choice. But because existence contradicts idealist theory, Reason's knowledge of its sovereignty becomes reason's awareness of its lack thereof.

Unable to find confirmation in political life, transcendental idealism turns to art. Here alone, Schelling admits, there is reflected "to me what is otherwise not reflected by anything, namely, that absolute identity which has already divided itself ... [within] the Self."<sup>83</sup> Art's beautiful fusion of nature and intelligence mirrors the unity of unconscious purpose and conscious illumination of purpose in transcendental idealism. Just as the philosopher surrenders his free will to the necessity of nature's becoming self-conscious through him, so does the artist surrender his will to intuition's rise to clear expression in his work. Both are passive conduits of an objective necessity. So, in the work of art, it seems, the philosopher has his proof of nature's teleology and Reason's rule. Here Reason's sovereignty over nature is independently manifested, as is nature's self-completion in Reason. Free will vanishes in art and philosophy, while its illusion thankfully persists in life.

Still, one may question whether this is really a solution. According to Schelling's own characterization of the work of art, the latter joins the unconscious identity of form and matter with individual conscious activity in a union forgetful of self-interested choice. This means that art, not less than philosophy, must contemplate an ideal realm of inward necessity and beauty by escaping life's harsh opposition between law and the self-interested will. Indeed, Schelling confesses as much when he says, "from ordinary reality there are only two ways out – poetry, which transports us into an ideal world, and philosophy, which makes the real world vanish before our eyes."<sup>84</sup> But if that is so, then art can hardly be called upon to confirm the truth of transcendental idealism. For how can it do so if its own is problematic? How can one flight from the world confirm the realism of another?

#### 4.4 *From Transcendental to Absolute Idealism*

Transcendental idealism founders on the dichotomy between subject and object it claimed to have dissolved. Having risen to a standpoint at which the Kantian dualism is resolved in bipolar complementarity, philosophy nevertheless re-encounters a block in the conflict between transcendental idealism and the very standpoint it had to transcend in order to overcome the separation between subject and object. For transcendental idealism, the self-centered will vanishes in the philosopher's (and artist's) self-effacing reproduction of a pre-established synthesis of intelligence and nature; for natural consciousness, the self-centered will is a fixed nature, and so intelligence must come forward as a law opposed to nature and using nature's own mechanisms to repress it. For the philosopher, the universal and the particular will are bound up in reciprocal dependence, each seeking completion in the other; for natural consciousness, they are mutually antagonistic. For the philosopher, all varieties of relationships in nature and human society are plunged into the one synthesis of transcendent self-consciousness; for natural consciousness, these relationships have a diversity and particularity that transcendental idealism has failed to respect. Moreover, this conflict between standpoints dooms Schelling's project, for he had sought to grasp an idea in which subject and object are distinct yet one, and now this idea is itself subjective in relation to an existence that fails to reflect it. The "my" in the title (*My System of Philosophy*) of Schelling's last exposition of transcendental idealism is a confession of failure: knowledge has reverted to opinion.

Here we might think to have struck a barrier intrinsic to transcendental thinking. After all, thinking at the standpoint of transcendent self-consciousness seems necessarily opposed to thinking at the standpoint of natural consciousness. Was not the move to the former meant precisely to liberate philosophy from the unexamined assumptions of the latter? But if that is so, then objective idealism seems faced with a dilemma. If it interprets life from within transcendent self-consciousness as yielding up multiple examples of unity-in-difference in accordance with a predetermined necessity, then it contradicts the natural

agent's sense of its free will and denies its experience of an opposition between law and nature. These become superficial appearances and hidebound prejudices in which non-philosophers (read non-Schellingians) are imprisoned. If, on the other hand, philosophy seeks to remain faithful to these features of life as commonly experienced, then it abandons transcendent self-consciousness as the ground of reality and therewith objective idealism. So, either philosophy treats the second-order world as *the* world and the first-order world as a product of false consciousness; or it treats the second-order world as a fanciful construction and the first order world as demanding comprehension in its own terms. Schelling initially chose the former alternative, but then, convinced of its artificiality, embraced the latter.

Hegel, however, rejects the either/or. At the core of his philosophy is the claim that the standpoints of transcendent self-consciousness and natural consciousness can be reconciled within a larger unity-in-difference encompassing both. In an essay written while still a follower of Schelling, Hegel already enunciates the idea that enabled him to remain with objective idealism even as its originator had begun to discard it:

Philosophy must give the separation into subject and object its due. By making both separation and the identity which is opposed to it equally absolute, however, philosophy has only posited separation conditionally, in the same way that such an identity – conditioned as it is by the nullification of its opposite – is also only relative. Hence the Absolute itself is the identity of identity and non-identity; being opposed and being one are both together in it.<sup>85</sup>

Let me try to gloss this important passage. The separation of subject and object is, as we saw, affirmed within the realist outlook of natural consciousness. This outlook is conditioned by, or dependent on, an unexamined assumption – namely, that the natural (immediate) individual has a fixed reality (it has no destiny to fulfill in political community or in Reason's self-thinking) such that how objective reality appears to it (externally given, unneedful of consciousness) is how objective reality is. Because, moreover, natural consciousness assumes that the natural individual has a fixed reality, it also assumes that the human individual is naturally atomistic, solitary and self-centered. It therefore sees law (the universal will) and nature (the particular will) as mutually antagonistic. For natural consciousness, law is an external and repressive force not simply for the bad man but inherently and for everyone.

Now, in contrast to natural consciousness, philosophy seeks a reality freed from dependence on unexamined assumptions – an unconditioned reality or reality simply. But insofar as philosophy reaches this reality by opposing the unity-in-difference of subject and object (in the transcendent Ego) to their separation (in natural consciousness), it remains conditioned by natural consciousness as something oppositional and one-sided, hence expressive only of an opinion – a particular perspective. By *reacting against* natural consciousness, idealism *uncritically* equates the separation of subject and object (and

opposition between universal and particular) with natural consciousness's uncritical adherence thereto and on that basis rejects separation (and opposition) *per se*, calling it illusion. But then the supposedly unconditioned reality is still conditioned (as an identity excluding opposition) by the natural consciousness it reacts against and so uncritically presupposes; it has not yet fully freed itself from uncritical thinking.

It follows that the impasse that Schelling's transcendental idealism has reached is not intrinsic to objective idealism; it is rather relative to an objective idealism still reactively tied to natural consciousness. An objective idealism truly independent of natural consciousness would, instead of reacting against it, autonomously consider whether the natural individual's realistic standpoint might be necessitated from the vantage-point of transcendental thinking itself. And it would reason that, since a one-sidedly asserted idealism cannot be knowledge, unity-in-difference must be validated as the structure of reality out of the mouth of natural consciousness itself – in the very realization of its independent aims, through its equivocally joining what it says are incompatible opposites and through the inversion of the extremes it holds in mutual exclusion. But then the ground of an unconditioned knowledge is not the simple unity-in-difference of subject and object in transcendent self-consciousness. It is rather this unity coupled with the process by which unity-in-difference is independently validated by natural consciousness through its autonomous setting up and dissolution of dichotomies. Accordingly, the ground of absolute knowledge must be defined (as in the passage quoted above) as the unity of (a) the unity-in-difference of subject and object in the transcendent self and (b) their opposition in natural consciousness.

Hegel calls the objective idealism that connects the standpoints of transcendent self-consciousness and natural consciousness absolute idealism. This, finally, is the name for Hegel's unique position, and we should pause to observe how far Kant's successors have advanced from him while remaining in a certain sense Kantians. The progression we've traced simply develops Kant's critical turn to self-consciousness and its implicit denial of the epistemic authority (reality) of the positive, of that which is given apart from mediation by reason. With Kant and Fichte we have the germ of the thought that the real and the rational are one, but only the germ, and it was for Schelling and Hegel to radicalize that thought by applying it critically to natural consciousness itself. In Kant's diffident idealism, objective reality still impinges on a self-consciousness equated with that of the natural individual whose fixed reality is assumed. As a consequence, reality is altered in being mediated by self-consciousness, and so the real and the rational are one only within an artificial human experience. From the standpoint of objective idealism, by contrast, reality discloses itself within a self-consciousness independent of the natural individual – within a transcendent self-consciousness. As a consequence, transcendental thinking can understand nature and history as yielding up progressively clearer examples of the unity-in-difference structure of transcendent self-consciousness. Whereas,



however, Schelling's objective idealism had polemically asserted the unity-in-difference of subject and object in transcendent self-consciousness against the separation of subject and object apparent to natural consciousness, Hegel's version *enlists* natural consciousness in the validation of unity-in-difference as the structure of reality. The process by which philosophies presupposing natural consciousness run aground on the dichotomy between subject and object but, driven by philosophy's commitment to free (presuppositionless) thought, move step by step to absolute idealism is the process by which absolute idealism gains validation as the culmination of critical thinking.

Observe that the move from transcendental to absolute idealism makes the natural individual potentially a partner in knowledge with transcendent self-consciousness. The natural individual whom philosophies of the understanding take for a fixed reality and whom they would therefore yoke unnaturally to law makes (for Hegel) a passing show of reality; for it is potentially bound up in a relationship of mutual deference with transcendent self-consciousness. And if, unbeknownst to itself, the natural individual is a partner in knowledge to transcendent self-consciousness, then it can, with others, become a knowing partner through the education to critical thinking that absolute idealism is. It can, that is, join a political community wherein it is transformed from its natural (immediate) state – so no longer self-centered – without losing significance for its separate ego. Indeed, since it gains in this community the absolute importance it has hitherto uncritically assumed but inevitably lost to an abstract law indifferent to individuality, it can become law-bound *pursuant to* its inclination toward self-love. It can devote itself to a political community that reciprocally recognizes in law the individual's infinite importance *qua* determinate ego.

Hegel calls the connection between transcendent self-consciousness and natural consciousness Spirit. This connection (and not transcendent self-consciousness by itself) is now the fundamental law of reality in terms of which transcendental thinking must understand the world. Spirit still has the structure of a unity-in-difference (bipolar complementarity) of subject and object, but now the difference is an extreme difference between two separate and independent selves or agencies. So unity-in-difference now has the meaning of union-in-alterity – of a *bi-personal* (or intersubjective) connection. Accordingly, we can now speak of unity-in-difference as a bi-personal complementarity by virtue of which one ego must defer to (recognize) another's independence for the sake of its own objective confirmation as a final end. Thus, transcendent self-consciousness (Notion) defers to natural consciousness as to that through whose autonomous development bi-personal complementarity is spontaneously confirmed as reality's immanent structure; natural consciousness spontaneously comes to recognize transcendent self-consciousness as that through whose self-knowledge its own rational importance (worth, dignity) is first objectively established.

Spirit is a divinity. Whereas Schelling's transcendent self-consciousness can be given a humanist interpretation, Hegel's Spirit cannot. This is so because no

human self-consciousness can encompass both sides of a relationship between one free self-consciousness and another. Human self-consciousness encloses a difference between subject and object within one ego (so difference is not alterity) such that an other remains outside the enclosure likewise reflected into itself – a separate and free interiority with ways or ends of its own. This is true not only of an individual self-consciousness but also of a species one. Species self-consciousness encloses the difference between a universal and a particular self. Outside this enclosure stands the separate self of the atomistic individual that, for species self-consciousness, is pre-given or natural – that which species self-consciousness *reduces* to unity. So, human self-consciousness is ineluctably one-sided, hence finite. By contrast, Spirit is a bond connecting two separate egos – two free interiorities – such that there is no other *outside* it, so no dependence on an *external* other. Alterity is internalized to a whole without, however, ceasing to be alterity. (From now on I'll write this whole as Whole to distinguish it from bounded or one-sided wholes.) As the archetype of unions-in-alterity, Spirit joins a transcendent self-consciousness with the separate self-consciousness of the natural individual; but that archetype is instantiated (as we'll see) in the relationships of mutual deference between natural egos making up the family, private law, and the economy, as well as in the relationship between the natural ego and the human state it authorizes. So, while human self-consciousness (even a species one) is a finite mind in that it is perforce limited by and dependent on an external other, Spirit is infinite in that otherness, separateness, are internal to it. Its divinity consists in its incomparable boundlessness. In it alone is other-dependence self-dependence.

While a divinity, however, Spirit is not uniquely an object for religion in the ordinary sense of a faith-based relation to a being conceived as supernatural. It is the object of religion in that sense if, in being distinguished (as boundless) from human self-consciousness, it is also placed remote from human self-consciousness – if it is pictured as a reality externally revealed to a passive humanity that plays no part in its reality whether by action or by insight. For then it must be an object for feeling and imagination but not for intellect, which, as that of the finite individual, must reduce it to human terms – contaminate it. In short, Spirit is an object of faith for the realistic attitude of the natural consciousness that uncritically absolutizes the immediate individual and that must therefore think of Reality as detached from human consciousness as such. Seemingly transcendent, supernatural Spirit is actually humanly determined – shaped by an individualistic conceit. However, the *same* theistic Spirit is also an object for a critical thinking free of the comforting certitudes of natural consciousness, one that pushes critical thought to the limit. And of course the theistic Spirit for free thought is not supernatural or remote from things human. It is a near object connecting in an intermediate term the very human polarities (universal ego, natural ego) that humanity on its own cannot connect but can connect with its help. So, Spirit is an object for religion “within the bounds of reason alone,” but an in-the-world object, not a Kantian idea of reason invented

to give cosmic point to morality; and not a “thing” behind appearances either, but a bilateral self-actualizing – a lack-filling *energeia* connecting egos that seem fixedly opposed but that are inherently complementary.

Because a natural divinity having the same bi-personal structure as the supernatural one imagined by faith can be an object for critical thought, not all religious skepticism is free-thinking. Skepticism as to the reality of a divine being based on a rationalist debunking of supernaturalism overreacts to supernaturalism, hence remains in the grip thereof. It is unfree skepticism. Also unfree is religious skepticism based on critiques (such as Hume’s) of the ordinary understanding’s ability to make the case for natural theism or say anything of scientific worth about God once revelation has been discredited as an authoritative source of truth. Such skepticism presupposes the ordinary understanding’s uncritical standpoint as the horizon of cognition; hence it shares that standpoint. So, as we saw, does Kant’s agnosticism regarding things of which no sensory experience is possible. In short, a radically free-thinking ouster of God from public human affairs must henceforth address (as Marx and Nietzsche did) Hegel’s free-thinking argument for natural theism.

As a Whole now encompassing the full difference between subject and object, Spirit is finally the ground or possibility condition of knowledge – the complete solution, Hegel thinks, to the problem initially posed by Kant. How can universals grasped by thought be valid for things existing apart from thought? Hegel’s answer is: by virtue of the connection between thought and existence in Spirit. Having at length reached a ground of knowledge free of the limits imposed by the uncritical consciousness, we are now positioned to determine what limit, if any, is intrinsic to cognition as such.

## 5 The Limit of Thinking

In the passage quoted above, Hegel wrote that an objective reality unconditioned by the assumptions of natural consciousness must by definition embrace both the identity-in-difference of subject and object and their opposition; for as identity-in-difference alone, it would be conditioned by the natural consciousness it reacts against. Thus, it belongs to the nature of an unconditioned or absolutely self-dependent reality that it be “the identity of identity and non-identity.”

However, definitions by themselves can be glib. Consider the ontological argument for God’s existence that Hegel saw as foreshadowing his argument for Spirit. Even if (conceding against the ancients that existence is a perfecting attribute) we grant that a perfect being cannot be conceived otherwise than as existing; and even if we progress beyond Kant’s locating ideas of reason in a mind abstracted from experience (whence his thought that existence cannot be unfolded from the idea of an Absolute), we can still ask whether the idea of a perfect being is coherent in the first place, considering the antitheses (for example, between incorporeal and corporeal, infinite and finite, eternal and

temporal) it must hold together if existence belongs to it. Even if it belongs to the idea of an Absolute to unite the identity of subject and object with their separation, it is a further question whether such a unity – and hence an Absolute – is rationally conceivable. Hegel says that identity and opposition “are both together in” (*ist zugleich in*) the Absolute.<sup>86</sup> But how is being “both together in” not an *ad hoc* combination of contradictories? Where is the rational necessity here?

If no demonstrable necessity connects the identity of subject and object in transcendent self-consciousness and their separation in natural consciousness, then no necessity drives us from Schelling’s idealism to Hegel’s. The failure of Schelling’s objective idealism would then be the failure of objective idealism simply. From that failure one could reasonably conclude (with Nietzsche) that absolute knowledge is impossible – that without an independent thing-in-itself against which to test idealist constructions of law, morality, the state, etc., there is only a plurality of unverifiable interpretive perspectives, each with a will to master the manifold pursuant to some pre-interpretive interest. What is called truth would then be whatever propositions flow from the contingent consensus on basic interests of an interpretive community. So, if no rational necessity connects the terms that an Absolute must contain, then both faith-based theism (for which the Absolute is a mystery) and philosophical atheism (for which there is no Absolute) are critical possibilities based on objective idealism’s collapse into “interpretation.” The choice would be between Kierkegaard and Nietzsche. Only philosophical theism would be impossible.

Let’s start again from the Notion. This, recall, is the point where, freed from the Ptolemaic prejudice of everyday consciousness, we release self-consciousness from the natural individual (so cease to think of it atomistically) and consider it as a transcendent or objective self-consciousness. We can now contemplate its structure as it exists in itself, unconditioned by us. Now, if we examine this structure closely, we’ll see that it contains a contradiction. The Notion is internally contradictory, not in the sense of being absurd or nonsensical, but in the sense of not being actually what it is inherently or implicitly (as a child is not the adult it is implicitly) and so of being self-inadequate – inadequate to its own inward nature. *Qua* notion, the Notion is not what it is *in* notion. In notion (implicitly), the Notion is a unity of distinct poles. It is a whole embracing the difference between a reflective subject (universal I) and a reflected-upon object (particular consciousness). As a notion, however, the Notion contains this difference within one and the same self-consciousness. So, difference is dissolved in identity, from which an other must again be distinguished. *Qua* notion, therefore, the Notion reduces (hence excludes) the difference that it contains *in* its notion. Dialectical in principle, it is one-sided in fact. This self-disparity can also be put in terms of the universal and the particular. *In* notion, the Notion is a unity-in-difference of a universal self and a particular consciousness. *Qua* transcendent Notion, however, it is only a universal self-consciousness juxtaposed to the particular individual. Finally, we

can think of the Notion's self-inadequacy as a failure of its form to live up to its implicit content. The content is identity-in-difference; the form is identity excluding difference.

As so far described, the Notion's self-discordance is something latent – buried in its nature like a hidden character flaw. It manifests itself when the Notion's philosopher tries to exhibit it as the law of reality (natural law) and when his political viceroys try to actualize its natural authority. Because the Notion is one-sided, its philosopher will exhibit it as the law of reality by reducing the diversity and complexity of life's relationships to its unitary structure and by unilaterally declaring that what the Notion excludes is inconsequential or vanishing; and what the Notion excludes, of course, is the natural individual – the individual in its immediacy. Taking this view seriously, the philosopher's political agent will actualize the Notion's authority by forcing the individual (because force is inherent to unilateralism) to give up its separate life and become the member of the totality that the philosopher says is its real nature. This, however, will contradict rather than prove the conviction that the Notion is natural law; for it will reveal the Notion as an artifice – an imposition. So, the self-disparity of the Notion can also be put in terms of natural authority and violence. *In* notion or implicitly, the Notion is the immanent end of the individual; *as* a notion, its supposed natural authority is a violent force imposed on the individual.

Taken alone, then, the Notion is at odds with itself – inadequate to its own nature. But this self-inadequacy, Hegel tells us, is not a block to transcendental thinking but, on the contrary, an internal stimulus. Far from negating the possibility of an Absolute (and posing an impasse to absolute knowledge), the Notion's self-contradictoriness reveals an internal source of development *toward* an Absolute. This is so because the Notion's self-discordance *qua* mere Notion reveals what is other-than-Notion – the natural or immediate individual – as something the Notion *lacks* to become actually the end (*telos*) it purports to be. What the Notion lacks is the natural individual's *spontaneous* acknowledgment of the Notion's logical priority. And if the Notion lacks the natural individual's free recognition, then the individual's rational importance presupposes (hence lacks) the Notion as that whose need for its recognition establishes critically the dignity that the natural individual claims (and inevitably loses) uncritically.

Lack, however, imports connection. So the natural individual does not lie inertly outside of, and indifferent to, the Notion. Rather, it is immanently differentiated *from* the Notion (for this is what it means for the Notion to lack it, to be self-contradictory without it) and therefore *within* a more comprehensive Whole that now embraces the full difference between subject (Notion) and object (determinate individual), universal ego and particular ego.<sup>87</sup> This Whole is now a dialogical connection between two separate egos – transcendent and natural. In the latter, we have an object for thought that is both ideally generated ("fallen") from the Notion and materially distinct from the Notion.<sup>88</sup>

*Qua* generated, the natural ego's lack-filling, recognition-seeking action forming families, society, and the state will be intelligible without remainder in terms of the Notion's dialectical fusion of the universal and the particular; *qua* distinct, the natural ego can independently confirm (or not) interpretation in terms of the Notion and so make knowledge possible. The free natural ego is now the Notion-independent thing-in-itself that Schelling's idealism made vanish (and whose supposed non-existence Nietzsche celebrates),<sup>89</sup> and the thing-in-itself is now an ideally unfolded natural ego fully transparent to philosophical sight. In the Notion's self-disparity, moreover, we also have a conceptually coherent account of how transcendent self-consciousness (incorporeal, infinite, eternal) and natural consciousness (corporeal, finite, temporal) can be linked as partners in Spirit. They are linked by a mutual lack and by the complementarity that mutual lack implies. But where in this larger Whole is opposition?

Observe that the bi-personal Whole to which critical thinking has led us is now a developmental process rather than a static idea; for the Notion contains an inner program to become the Whole it self-contradictorily is not. That process consists of three phases. To begin with, the Notion's one-sided unity-in-difference asserts itself as natural law against the immediately existing individual. That is phase one. The Notion's negation as natural law or inversion into conventional force then conceptually enfranchises the natural ego that now takes itself for a hard reality and for which law (universal will) and nature (particular will) are therefore mutually antagonistic. That is phase two. Here the Notion's unity-in-difference of universal and particular splits into hostile opposition: law is repressive of a human nature taken to be egocentric. Because, however, this is phase two of a logically continuous development (because the natural ego is immanently differentiated *from* the Notion as that which the Notion lacks), the opposition between law and nature that natural consciousness takes for a primordial truth is actually a logical *result*. Specifically, it is the result of the Notion's negation as natural law – hence of a prior harmony lost. And because the opposition results logically from the Notion's inversion into artifice, it is not the stark dichotomy between compartmentalized spheres – freedom's law and nature's law – that natural consciousness takes it to be. It is rather a sundering of what was originally whole and therefore the *internal self-splitting* of a latent but more comprehensive whole – Spirit. Finally, because the split between freedom's law and nature's law is internal to a latent whole, it is not a constant of the human condition, as natural consciousness thinks. It is healable, and in the third phase it is healed. Here the opposite extremes of universal will and particular will acknowledge each other's end-status without corruption or self-loss, because each submits through the mediation of revealed Spirit wherein both the universal (transcendent) Ego and the particular (natural) ego are preserved as equal partners. With this act of mutual recognition, the extremes return to their inherent ground, and so the latent whole becomes an actualized Whole. Spirit becomes Absolute Spirit.

The actualized Whole, however, is not merely the culminating phase. It is the developmental process in its entirety, of which the oppositional phase is an essential part; for it is only through the sundering and spontaneous ingathering of the opposites (universal and particular wills) that the unity of the opposites *qua* complements is objectively validated as the law of reality. That, finally, is how both identity and opposition can coherently be “together in” a totality. Still, if one were asked where in this story of exile and return the Absolute appears, one would have to respond “only at the end.” This is so because, as Hegel tells us, the Absolute cannot be one-sided, for anything one-sided is limited by an other and so finite. Yet, prior to the latent whole’s becoming an actualized Whole, there is no position that is not one-sided. The latent whole “known” to the philosopher is juxtaposed to the hard opposition “apparent” to natural consciousness. Only at the end is there a meeting of minds.<sup>90</sup>

The three phases of the Absolute can be described in terms of the quarrel and reconciliation between ancients and moderns. Think of the Notion at phase one as the model ancient *polis*, to which, Hegel believed, historical Athens came closest. Here the universal Ego is confirmed as the human individual’s natural end through the individual’s free devotion to the *polis*, and the determinate individual is confirmed in its rational importance through the universal’s reciprocal deference to its spontaneous patriotism. In that the collective and the individual are mutually complementary, the state is a genuine political community – a whole formed from the interlocking of public (assembly) and private (family) spheres, each of which presupposes and contains the other. So the determinate individual sentimentally valued by the family is rationally confirmed in its value by the *polis*’s need for its civic devotion, while *polis* law depends for its natural authority on the same immemorial custom that sanctifies the family.

Yet there is an outside to this one-sidedly human identity-in-difference. It is the natural or immediate individual here understood in its brute animality, with which the individual differentiated from the *polis* whole is thus identified. This means that, to gain practical confirmation of its end-status, the *polis* must denigrate and unilaterally subordinate – treat as having no claim to respect – the differentiated individual whose *spontaneous* confirmation it nevertheless requires. Just in actualizing its supposed natural authority, the *polis* turns from natural end to anti-natural convention.

The negation of the *polis* as natural law confers value on what it denigrated and excluded to its ruination. This is the natural or immediately existing individual, who, in the second phase, is a *person* claiming end-status solely by virtue of its innate free will, hence independently of political association. Inherently *dis*-embedded from a *polis* unable to satisfy the worth-claim its own one-sidedness engendered, the person regards itself as simply *not* embedded (for the *polis* teleology has collapsed), hence self-sufficient as to worth. So, the individual is now a solitary, right-bearing agent whose only social relations are market interactions between self-interested egos. Here, therefore, political association

is justified, not as humanity's natural end, but as a necessary means to the security of the apolitical person and its acquisitions. Accordingly, the state is now a "civil society" rather than a political community – a market society ruled externally by law.

Because, however, the self-centered ego is taken as a fixed (natural) reality, impartial law must come forward as an imperative opposed to nature, one whose artificial authority requires justification in terms of the very natural egoism it restrains. To constitute this authority, the person must relinquish its claimed independence to a sovereign, who is thereby constituted as legally unfettered or despotic. In phase two, accordingly, the state is the "Leviathan" characteristic of modernity and justified by modernity's social contract philosophers from Hobbes to Kant. Justification, however, always leaves a legitimacy deficit, for now public and private sectors stand implacably opposed, and the state is identified with the public side, hence with a partisan interest relative to the private. So either the state enforces a particular interest in a collective welfare hostile to the natural liberty of persons, or it swallows the independent private sector in a totalitarian general will. In the first case, political authority is partial and so legally resistible (Hobbes); in the second, it abolishes the very private ("state of nature") rights of property its authority was justified as protecting (Kant, Fichte).

To the natural consciousness, these problems are intractable because its opposition between public law and private rights is irreconcilable. Also seemingly irreconcilable, therefore, is the ancient ideal of political unity under a natural human end but without the rights of separate persons (on the one hand) and the modern paradigm of political bifurcation (into state and society), in which there are individual rights but no natural human end (on the other). If, however, civil society's opposition between public and private spheres is the self-splitting of a latent whole, then it is potentially reconciled in a new political community, which I will call the *dialogical polity*. In phase three this inherent potential is actualized. The opposites understand themselves as abstractions from a latent whole, recognize each other as the complements they are, thereby bringing the dialogical polity into existence.

This polity is neither ancient nor modern but the synthesis of both. It is the full development to union-in-alterity of the truncated unity-in-difference of the *polis* in embryo. Like the ancient *polis*, the dialogical polity connects public and private sectors as mutually complementary parts of a Whole. But unlike that *polis*, it (a) makes room within its unity for the private rights of the separate individual (now understood not as an animal but as a free personality), for as products of a mutual recognition, these rights vindicate Spirit's bi-personal nexus as natural law out of the mouth of its other – of the person who claims worth in isolation, and (b) awaits rather than forces the atomistic individual's acknowledgment of the dialogical polity as its end. In this way, the new political community accommodates the individual's rebellion against the ancient community, for it needs the independent person to recognize it as its end – as the ground of its separate worth. Reciprocally, the individual person



needs the dialogical polity as that which recognizes and values its freedom and independence. Their mutual recognition brings Spirit into existence as a State adequate to the idea of a state (so as a perfect state), which is the idea of a Whole – something not partial or one-sided. The latent whole (Spirit) becomes the explicit Whole (Absolute Spirit), which, as the only true Whole there is, is uniquely the seat of political justice. Because Spirit is a theistic connection, the State in which it materializes is (as Hegel frequently tells us) a Kingdom of God.

Having arrived at the reality Hegel calls Absolute Spirit, we gain our first glimpse of the limit intrinsic to transcendental thinking. Spirit's self-knowledge (through the philosopher) as the law of reality requires, as we saw, a meeting of minds between the philosopher and natural consciousness; for without agreement, the philosopher merely asserts a perspective. So the ground of knowledge outstrips the philosopher's one-sided thinking. The basis for the unity-indifference of subject and object, it turns out, lies not in a Notion alone but in a totality of which the Notion is one element and a free natural consciousness the other. That is, it lies in a dialogical relation between two independent minds – the philosopher's and that of natural consciousness. The subject of transcendental thinking, we can say, is an ego. But the ground of knowledge is a mutual recognition between two separate egos – a bi-personal connection. Philosophy encounters a limit in knowing Spirit's bi-personal complementarity as the law of reality because knowledge requires a meeting of minds, of which the philosopher's is only one. The philosopher cannot force a meeting of minds.

At the same time, we now see why such a limit need not constitute an impasse for philosophy. Because the distinction between Notion and natural consciousness is the internal sundering of one Spirit, each side inherently presupposes the other and so spontaneously moves toward recognition of the other as its complement. For Schelling's idealism, that which was other than the Notion's identity – the natural individual's free will and the conflict between law and nature its primacy entails – was also excluded from it. Consequently, the philosopher's exhibiting the Notion as the law of reality had to deny the reality of conflict. It had to make the real world "vanish before our eyes." By contrast, Hegel's idealism need not assert itself *against* life's hard oppositions. It can surrender to them ("sacrifice itself") in the confidence that, since they are abstractions from a latent whole, Spirit's bi-personal nexus is immanent in them and can be exhibited there in the mutual dependence and inversion of opposites as well as in their progress toward reconciliation. Thus, the philosopher's surrender to the bifurcation of civil society is compatible with an idealism that comprehends it as the coming-to-be of political community.

But now another difficulty presents itself. Is the philosophic thought that assumes the transience of civil society's opposition between public and private spheres and interprets it that way really an understanding of political reality – a surrender to the object as it exists in itself – or is it another artificial construction and falsification of reality? After all, natural consciousness views the dichotomy between the universal will and the particular will to be a hard-and-fast one. And as long as the prejudice regarding the fixed reality (naturalness) of the

isolated ego prevails, that dichotomy will *in fact* be a hard-and-fast one. Were Hegel's philosophy simply to arrive on the scene and, in the face of the actual antagonism between law and nature (state and society) proclaim harmony, it would once again be reduced to a bare assertion fatal to its claim to knowledge.

Here at last, then, we see the limit of philosophic cognition. Only if the antagonistic poles of modern civil society – the poles of public and private – have *as a matter of fact* returned *proprio motu* to their unity in Absolute Spirit can the philosopher interpret political life in terms of Spirit without dogmatically asserting a point of view. Absolute knowledge presupposes the existence of the political community conformable to Spirit; it requires that the dialogical polity have already come into being. Accordingly, we can conclude that the intrinsic limit of philosophic cognition is political action. Philosophy can truthfully interpret existence in terms of Reason (here Spirit) only if existence has already *from its side* become rational – only if it has spontaneously come to mirror Spirit's union-in-alterity of the universal and the particular will. So political action poses a limit to cognition because it is the precondition of philosophy's becoming genuine knowledge or science. Nevertheless, this limit is not an impasse because, inherently reconciled, the poles of civil society can become actually so, and philosophy can witness this unity. So Hegel famously says that philosophy cannot teach the world what it ought to be but can only recognize the rationality of what is.<sup>21</sup> But what is must have become rational, or else philosophy ignominiously rationalizes what merely exists.

In Chapter 5, we'll see that the task of the *Philosophy of Right* is to comprehend the coming-to-be out of modern civil society of a new political community – one that binds the public and private poles of civil society into a Whole in which both are preserved, thereby reconciling ancient civic virtue with modernity's respect for the private rights of the separate ego. And some questions we shall have to ask are: What concrete social and political institutions are necessary for this reconciliation to occur? Did they exist in Hegel's time or do they exist in ours? Does Hegel succeed in contemplating political life as a unified Whole or are there unresolved oppositions? If there are unresolved oppositions, what implications do they have for Hegel's philosophy? Do they explode it, as Marx thought? Or do they reveal it as simply untimely? If untimely, what practical role can Hegel's philosophy play in a world not yet ready for it?

We have said that cognition's limit is not an impasse. Certainly this is true if political life, which potentially mirrors the structure of Spirit, has come to mirror it actually. Yet the fact that knowledge of reality presupposes a perfected state hints at an element of circularity from which an impasse might yet emerge. For Hegel, as we saw, civil society is characterized by the mutual hostility of the universal and the particular will, the former characterized as the repressive force of law against the natural selfishness of the ego. Now in the next chapter, we'll see that the reconciliation of these extremes can occur only through the intervention of a "middle-term" which, in its independence of either extreme taken separately, contains both in a bi-personal Whole – in a unity of separate selves.

Only through such a mediator can the extremes of civil society submit to each other without self-loss. But is not this required middle term precisely Spirit's self-knowledge as the law of reality in and through natural consciousness? If so, a vicious circle presents itself. "Bifurcation," Hegel wrote in an early essay, "is the source of the need for philosophy..."<sup>92</sup> We have just seen, however, that absolute knowledge is possible only if bifurcation has *already* been healed, for only then is the philosophy of Spirit confirmed as the science of Spirit. But then if absolute knowledge is indeed required for overcoming bifurcation in the first place, then it would seem to be impossible, and so too, then, would the perfect state be impossible. In the following chapter I argue that absolute knowledge is indeed a necessary *precondition* for the unification of civil society in the dialogical polity. At its conclusion, therefore, we shall be obliged to reopen the question as to how either absolute knowledge or a perfect state is possible.

## Notes

- 1 Enz, para. 2.
- 2 Enz, para. 3–5; see also para. 19, Z2 and paras. 20, 22–24.
- 3 Enz, para. 20, 23. See also HP, I, 88 f.
- 4 Enz, para. 12.
- 5 Enz, para. 6.
- 6 Werke, 18, 129 (HP, I, 236).
- 7 Politics, 1253a.
- 8 HP, I, 236.
- 9 HHP, III, 165.
- 10 B. Spinoza, *Ethics*, Part One, prop. 29, 33; G.W. Leibniz, *Monadology*, para. 36; F. W. J. Schelling, *System of Transcendental Idealism*, p. 210.
- 11 D, p. 156.
- 12 Phen, p. 32: "Scientific cognition... demands surrender to the life of the object, or, what amounts to the same thing, confronting and expressing its inner necessity."
- 13 Enz, paras. 418–20.
- 14 Enz, para. 422.
- 15 Not all individuals are natural. When an individual wears a monarch's crown or a judge's wig, he becomes the conceptual individual in whom the universal becomes concrete, and that individual neither comes into nor passes out of existence. Hence the saying: "The King is dead; long live the King." So, the natural individual is the one unmediated by a concept – hence the "immediate" individual.
- 16 Enz, para. 26–36.
- 17 HHP, III, 233–41, 282 ff.
- 18 Enz, para. 38.
- 19 John Locke, *An Essay Concerning Human Understanding*, Book II, ch. 23.
- 20 David Hume, *An Enquiry Concerning Human Understanding*, pp. 35–39.
- 21 Enz, para. 26.
- 22 Some interpreters take self-consciousness to be Hegel's fundamental idea and accept it as the Absolute; see Kojève, *Introduction*, pp. 71–74. Others take it to be his

fundamental idea, reading out the Absolute; see Pippin, *Hegel's Idealism*; Pinkard, *Hegel's Naturalism*.

23 EL, para. 24, A1.

24 HHP, III, 359.

25 CPR, B vii–xv.

26 The rest of this chapter agrees with Robert Pippin's thesis that Hegel's absolute idealism develops and completes Kant's critical turn to self-consciousness but argues that this completion is just the philosophical theology that Pippin suppresses and that he misidentifies with pre-critical metaphysics; see *Hegel's Idealism: The Satisfactions of Self-Consciousness*.

27 Dieter Henrich argues that this must be understood, not in a natural sense, but as a transcendental deduction of sensibility from (a) the emptiness of the "I" and (b) its dependence on a something it can think. From this is derived "the necessity of the being-there of a dimension of givenness to the subject." See *Between Kant and Hegel*, p. 42. However, that givenness to the abstract subject should mean *external* givenness to self-consciousness cannot be a transcendental necessity, yet Kant seems to retain this picture of sensibility; hence the dualistic (as opposed to synthetic) conception of knowledge that Henrich stresses in Kant's system (p. 38).

28 CPR, A 104–8.

29 CPR, B 37–39.

30 CPR, B 47–50.

31 For example, the temporal intuition of succession prepares the manifold for the category of causation understood as lawful succession (CPR, B 183).

32 CPR, B 74.

33 CPR, B 303: "The Transcendental Analytic has...this important result: That the understanding can never accomplish a priori anything more than to anticipate the form of a possible experience in general, and, as nothing can be an object of experience except the phenomenon, it follows that the understanding can never go beyond the limits of sensibility, within which alone objects are given to us. Its principles are merely principles for the exposition of appearances..."

34 CPR, B 84–86.

35 EL, para. 48. Half-admired because Kant, while pioneering for modernity the thought that contradictions are necessarily involved in thinking about the unconditioned, mistakenly ascribed them to the frailty of human reason rather than to the unconditioned itself.

36 CPR, B 362–3: "[An idea of reason is at most] a subjective law of economy for the [stores] of our understanding, so that through comparison of its concepts it may bring their universal use to the smallest number, without justifying us in demanding of objects themselves any such [uniformity] as might make things easier for our understanding or help it extend itself, and so give objective validity to its maxims as well."

37 SL, p. 515. Emphases in text.

38 Hegel's commentaries on CPR are scattered throughout his writings; see especially HHP, III, 423–56; SL, pp. 515–25; *Enz*, paras. 40–52.

39 CPR, B 75.

40 SL, p. 522: "It will always be a source of wonder that the Kantian philosophy did acknowledge that the relation of thought to sensuous existence (the relation at which it stopped) is only a relation of mere appearance...and yet stopped short

at that relative relation and at the claim that the [Notion] remains utterly separate from reality – thus asserting as *truth* what it declared to be finite cognition, and explaining away as extravagant and illegitimate figments of thought what it recognized as *truth* and had specifically defined as such.”

41 For example, in *Enz*, para. 45.

42 *Enz*, paras. 45A and 60A1.

43 EL, para. 45A: “Since, upon this view, reason is regarded as simply going beyond the finite and conditioned character of the understanding, it is thereby itself degraded into something finite and conditioned...”

44 J. G. Fichte, *The Science of Knowledge*, trans. Peter Heath and John Lachs, pp. 3–4, 12n.

45 *Ibid.*, pp. 6, 31.

46 *Ibid.*, p. 13.

47 *Ibid.*, p. 97.

48 *Ibid.*, p. 122.

49 *Ibid.*, p. 103.

50 *Ibid.*, p. 104.

51 *Ibid.*, p. 110.

52 *Ibid.*, p. 123.

53 *Ibid.*, pp. 172–3.

54 I say “so-called” synthesis because, as Hegel observes, a true synthesis would be one wherein the opposing absolutes are demoted to complementary parts of a whole; here, the opposition between absolutes remains and the extremes merely limit each other’s tendency to expansion – to claim all reality for itself; see D, pp. 124–9.

55 Fichte, *The Science of Knowledge*, p. 203.

56 Fichte, *Über den Begriff der Wissenschaftslehre oder der sogenannten Philosophie* in J. G. Fichte, *Sämtliche Werke und Nachlass*, I: 58–59.

57 Fichte, *The Science of Knowledge*, p. 231.

58 HHP, III, 505.

59 Allen Wood denies that Fichte is a subjective idealist, but that is because he equates subjective idealism with the thesis that all we can know are the objects mediated by consciousness, which objects are appearances in relation to the real X outside consciousness; *Fichte’s Ethical Thought*, pp. 30–32. Fichte is not a subjective idealist in that sense (nor did Hegel think he was) because he does not think there is an X *outside* consciousness. But he does think there is an unassimilable not-self *opposed* to a self – one that renders all representation an imposition rather than a disclosing; and that too can be called subjective idealism. This is confirmed by Fichte himself in *The Vocation of Man*, pp. 81–82: “What has its origin in and through knowledge is merely knowledge. But all knowledge is only pictures, representations; and there is always something wanting in it – that which corresponds to the representation. This want cannot be supplied by knowledge: a system of knowledge is necessarily a system of mere pictures, wholly without reality, significance, or aim. Did you expect anything else? Would you change the very nature of your mind, and desire your knowledge to be something more than knowledge?”

60 D, p. 156.

61 Allen Wood, *Fichte’s Ethical Thought*, p. 32: “Fichte’s transcendental inquiry... takes for granted what common sense realism holds about the objects of our representations, and never tries to get beyond or beneath it.”

- 62 Hegel calls his philosophy an absolute idealism in Enz, 45Z, 160Z, 337Z.
- 63 Schelling calls the objective world “the original, as yet unconscious, poetry of the spirit”; he calls the philosophy of art the “universal organon of philosophy.” *System of Transcendental Idealism* (1800), p. 12.
- 64 Pippin, however, identifies this standpoint with Hegel’s, from which identification follows his denial of Hegel’s theism. He thinks that the Notion is Hegel’s fundamental principle, whereas Hegel tells us time and again (e.g. Phen, p. 14) that Spirit, of which the Notion is one element and its realization in *free* existence the other (and to whose worldly development the Idea is the logical key), is the Absolute. See *Hegel’s Idealism*, pp. 87, 168–70, 232.
- 65 For a comparison of Schelling’s and Hegel’s versions of objective idealism see Emil Fackenheim, *The Religious Dimension in Hegel’s Thought*, pp. 25–30, 87–90.
- 66 *System of Transcendental Idealism*, pp. 1–4, 16.
- 67 *Ibid.*, p. 215.
- 68 *Ibid.*, p. 6.
- 69 *Ibid.*, p. 6.
- 70 *Ibid.*, p. 12.
- 71 *Ibid.*, p. 218.
- 72 *Ibid.*, p. 187.
- 73 *Ibid.*, p. 188.
- 74 *Ibid.*, p. 195.
- 75 This was already evident in the Kantian understanding of state coercion as a deterrent threat incentivizing compliance with law, which view Schelling accepts. So Schelling says that law stands to freedom “precisely as mechanics stands to motion, in that it merely sets forth the natural mechanism under which free beings as such can be thought of as interacting.” *System of Transcendental Idealism*, p. 195.
- 76 *System of Transcendental Idealism*, p. 198.
- 77 *Ibid.*, p. 204.
- 78 *Ibid.*, p. 213: “Subjectively ... for inner appearance, we act, but objectively we never act; it is rather that another acts through us, as it were.”
- 79 *Ibid.*, p. 207.
- 80 *Ibid.*, p. 210.
- 81 *Ibid.*, p. 220.
- 82 *Ibid.*, p. 203.
- 83 *Ibid.*, p. 230.
- 84 *Ibid.*, p. 14.
- 85 D, p. 156.
- 86 JKS, p. 64; *Werke*, II, 96.
- 87 PM, para. 379A: “The Notion does not require any external stimulus for its actualization; it embraces the contradiction of simplicity and difference, and therefore its own restless nature impels it to actualize itself, to unfold into actuality the difference which, in the Notion itself, is present only in an ideal manner, that is to say, in the contradictory form of differencelessness, and by the removal of its simplicity as of a defect, a one-sidedness, to make itself actually that whole of which to begin with it contained only the possibility.”
- 88 If, with Marx, you consider the natural ego’s logical unfolding from the Notion incredible, consider this. While a practical philosophy should confirm rather than annul our shared intuitions about right and morality, counterintuitiveness in its

basic idea is no defect, for we expect science and philosophy to challenge our prejudices. In this case, Hegel has simply elaborated the full implications of the Copernican liberation (begun by Kant) from the everyday prejudice concerning the priority of the immediately given ego and the authoritativeness of its realist outlook. Marx's materialist inversion of Hegel's idealism remains reactively tied to that prejudice, for it equates the separate (private) ego with the immediately given ego and on that basis abolishes a sphere for the separate ego as such. Just as the cogency of counterintuitive theories (postulating curved space, black holes, etc.) of physical nature depends on their power to explain observable phenomena, so does the cogency of absolute idealism's counterintuitive head-walking depend on its explanatory power as a theory of history, society, and the state. So, incredulous minds should at least remain open.

89 Friedrich Nietzsche, *The Will to Power*, pp. 300–7.

90 So Hegel writes (*Phän*, p. 15): "The truth is the Whole. The Whole, however, is merely the essential nature [i.e. the Notion] fulfilling itself through its development. Of the Absolute it must be said that it is essentially a result, that only at the end is it what it is in truth; and just in that consists its nature, which is to be actual, subject, or self-becoming."

91 PR, p. 15.

92 JKS, p. 12; *Werke*, II, 20 (D, p. 89).

## The Limit of Action

...spiritual life differs from ... animal life in that it does not remain sunk in being-in-itself but is for-itself [or self-conscious]. This standpoint of bifurcation must likewise be overcome, and the spirit must by its own act return to unity with itself. This union is then a spiritual one, and the principle of restoration lies in thought itself. The very same thinking that inflicts the wound also heals it.

*Enz*, para. 24A3

### 1 Introduction

It is a commonplace of Hegel scholarship that his “absolute knowledge” is politically quietist.<sup>1</sup> Except in wartime, we are often told, the bifurcation of political life into state and market is, for Hegel, a constant – a necessary phase of Spirit’s self-unification in art, religion, and philosophy. The insight into this necessity is supposed to reconcile us to it, while actualizing in the contemplative life the union-in-alterity of the universal and particular egos that remains non-actual in the state. The first chapter’s purpose was to show that any such dualism between philosophy and political life must, by Hegel’s own lights, undermine his claim to knowledge of reality; for such knowledge demands that the latent complementarity of universal and particular egos affirmed by philosophy have spontaneously manifested itself in the state. The present chapter’s purpose is to show that this consummation in turn requires philosophy, specifically that form of philosophy which consists in Spirit’s self-knowledge as the law of reality. Hegel’s philosophy, I argue, is so far from being quietist as to see itself as the *sine qua non* for the perfection of political life.

Before commencing the discussion, however, I want to point to a methodological difficulty confronting it. In order to show the sense in which political life needs Hegel’s knowledge, we must first consider how each pre-Hegelian standpoint organizes human society in accordance with its own conception of



a fundamental end. Then we must show how this society subverts rather than realizes the conception *qua* fundamental and finally how Hegel's conception – Spirit – solves the problem experienced but left unsolved at all previous stand-points. In short, the entire thrust of our exposition must be critical, emphasizing the negative rather than the positive or preserving aspect of Hegel's dialectical method.

The difficulty, however, is that in his treatment of "objective mind" in both the *Encyclopaedia of the Philosophic Sciences* and the *Philosophy of Right*, Hegel's emphasis is on the positive phase. In both works he is primarily concerned to exhibit institutions manifestly ordered to human personality as latent manifestations of Spirit, within whose interiority they are collected as necessary constituents of the political life sufficient for freedom. The negative side these institutions display as embodiments of a human personality treated as fundamental is downplayed. So, for example, the sections on "Abstract Right" and "Morality" together form little more than an introduction to the rich ethical life from which they have been abstracted. While no doubt critical in their orientation, they are written in the highly condensed and matter-of-fact style one would expect from a philosopher who regards all critical tasks as having been historically accomplished, leaving as the sole important one that of integration. Moreover, neither of the fundamental ends organizing these sections is shown forming its own socio-historical reality in which the fundamental end is subverted rather than realized. Again, the implication is that such defective formations have been historically superseded and need not be belabored by a philosophy that considers the times ripe for systematic comprehension in terms of Spirit.

The upshot is that we do not possess in either of the treatments of objective mind belonging to Hegel's published system a basis upon which our discussion can comfortably rest. We could conceivably rely on the relevant portions of the *Phenomenology of Spirit*, where Hegel is specifically concerned to justify his philosophic standpoint and so to examine others in their separate historical existence. However, I should like to save consideration of the *Phenomenology* for later chapters, where it will come forward as the solution to the circularity problem we are still in the process of setting out. I propose instead to base the discussion on Hegel's second draft of the *Philosophy of Spirit*. Written for lectures delivered at the University of Jena in 1805–6, this draft was first published by Johannes Hoffmeister in 1931 as part of the so-called *Jenenser Realphilosophie II*.<sup>2</sup> At the time Hegel composed these lectures, European political realities were such that the critical side of the dialectical method had still to be stressed, the integrative tendency of the later *Encyclopaedia* being as yet unthinkable.<sup>3</sup>

It might be objected that in relying on the *Realphilosophie II*, I am tying my argument to an immature phase of Hegel's philosophic development. After all, the period 1801–6 was one of intellectual growth for Hegel as he gradually pulled himself free of Schelling's tutelage. This process can be traced over the entire series of early drafts of the *Philosophy of Spirit*, of which the one I

propose to consider is the last. Very briefly, the development is from a position that asserts the unity-in-difference (in the Notion) of the universal and the particular will in the face of their opposition in political life toward one that recognizes opposition as an essential phase of a Whole genuinely inclusive of otherness – of the rights of the non-civic or atomistic person.<sup>4</sup> In the *Realphilosophie II*, however, this development is complete. Here private production and exchange are no longer unilaterally subordinated to the united people and its virtuous political class in the manner of Plato and Aristotle; rather they are now permitted an autonomous development as the drive to nature-mastery of the solitary person. True, Hegel does not yet use the term “civil society” (*bürgerliche Gesellschaft*) to designate this condition of unleashed egoism and the hostility between law and nature it engenders. But the condition itself is unflinchingly and twice confronted, first from the standpoint of natural consciousness and subsequently from that of the Whole. So, while the treatment of objective mind in the *Realphilosophie II* differs in several details from later versions, it is nonetheless safe to say that with this draft Hegel reached his mature political philosophy.<sup>5</sup>

We turn now to this chapter’s substantive issues. What is it about human action and the just state that makes unassisted human action disproportionate to political justice? What is it about absolute idealism that enables it to bridge the gap?

## 2 Subjective Mind

### 2.1 The Independence Project

Central to Hegel’s philosophy of action is the concept of will. The essential attribute of the will is its freedom, by which Hegel understands something very different than Kant did. Kant distinguishes between *Willkür* and *Wille* – between the free choice of an end given by natural inclination and the independence from inclination achieved by acting from no motive of self-interest but solely for the sake of realizing law. *Willkür* is thus the freedom of the particular will, *Wille* the freedom of the universal or pure will, and they are mutually exclusive. The particular will, following nature, chooses what is narrowly advantageous to self; the pure will, acting morally, chooses what all free selves would choose without regard to private advantage. For Kant, only the pure will is genuinely free, for it alone has a content – namely, universal laws of freedom – derived from the free will itself. It is independent of every end given externally by nature.

For Hegel, neither the particular nor the pure will is genuinely free, though both are constituents of a synthetic conception of the will whose freedom is genuine. The will’s freedom consists partly in its capacity to detach itself from all ends given by natural inclination even to the point of showing indifference to life. However, a will that achieves independence by withdrawing from dependence on objects of inclination is not yet fully independent. Such a will

is actually conditioned as something purely formal (empty of determination) by the natural ends from which it recoiled. Equating determination with determination by natural inclination, it rejects determination as such. So, the will detached from natural inclination is internally contradictory. Putatively independent, it is actually dependent. Also self-contradictory, however, is the will that has nothing but natural inclination from which to choose determinate ends, for the will then loses in action the freedom from nature that it possessed prior to action.

Freedom for Hegel is the synthesis of detachment and determination. The will is free neither in recoiling from all particular ends nor in acting for particular ends given by natural inclination, but in acting for particular ends that specify the general goal of *realizing* the will's independence by subordinating nature to its primacy. To act for particular ends specifying the goal of the will's independence is to transform nature from something independently given into a sign or embodiment of the will such that the will sees its own end-status reflected in nature. In so acting, the will also subordinates the body's natural appetite (*Begierde*) for objects to the will's intellectual desire (*Trieb*) for self-realization.<sup>6</sup> This is an intellectual desire in the sense that it springs from the inner contradiction between the detached will's putative independence and its actual dependence, hence from its lack (*Mangel*) of objective reality.

At the stage of subjective mind, the project of realizing independence is strictly an individual affair. To be sure, individuals form families, families compose clans, and clans make up tribes. However, in subjective mind, there is no relationship achieving independence from nature that is not self-contradictorily driven by the biological needs and natural urges of individuals – none intelligible in the objective, public, and impersonal terms of the free will *alone*. So there is no property, no division of labor, no law, and no state. There is an economy, but it is a subsistence one. It develops from hunting and gathering to agriculture, and it is internal to the household. There is also slavery. This relationship too belongs to subjective mind, for the slave is someone who, sunk in the biosphere, fails to self-identify as a nature-independent person identical and equal to all others.

Hegel calls action directed to ends that specify the goal of independence “labor.” As the will subordinates bodily appetite to its own desire for independence, so does it subordinate animal hunting and gathering to productive (hence transformative) labor. The most primitive (because still instrumental to the satisfaction of bodily appetite) form of labor is tool-making. Agents fashion tools in which naturally found materials become means for their control of nature. In making a tool, the agent forgoes an immediate gratification for the sake of assuring itself of a stream of gratifications. Thus nature is at once transcended and controlled. Control, however, is not simply by external force applied against a nature indifferent to human ends. Control by force could never realize the agent's independence of nature, for it would always leave nature as something irreducibly external. For control to achieve independence, it must be the case

that the agent's subordination of nature to its ends is simultaneously the self-movement of nature to its own end. In that case the will would have objective confirmation of its end-status in what is other than itself.

Something like that kind of confirmation occurs when, instead of applying brute force to nature as they do in hunting, agents apply "cunning" to turn nature's own laws to human ends. This they do in agriculture, for example. Agricultural labor as much defers to nature as masters it, and the deference makes for a better mastery. The humanization of nature is completed in nature's self-movement toward its own reality as a sign of human freedom. Or, as Hegel puts it, subordinating nature to human use through cunning shows that "man is the destiny of the singular."<sup>7</sup>

## 2.2 *The Eros-Based Community*

Still, nature's auto-confirmation that the free will is its end is unsatisfactory in tool-making and agriculture. This is so because the natural object – the metal, the land, the domesticated animal – is not yet a self or free will that can give itself up *spontaneously* to the agent's project of realizing its end-status vis-à-vis nature. Precisely this occurs, however, in the erotic relation between a masculine (M) and a feminine (F) agent. I did not say "between a man and a woman." Modern sensibilities against gender stereotyping will not prejudice us against Hegel's teaching on erotic love if we bear in mind that, whatever Hegel the man empirically thought, his philosophic teaching applies by its terms to gender psyches (or to masculine and feminine principles) rather than to physical sexes; and it applies to masculine and feminine roles in erotic attraction, not to the roles of physical men and women in society, the state, or even the family. So with that caveat, we can read Hegel's text in the following way.

The masculine agent identifies himself with the free will's detachment from nature. He is thus the locus of the will's inner contradiction between putative independence and actual dependence on a seemingly external and indifferent other. He is therefore also the locus of a desire to overcome the contradiction by gaining confirmation from nature that his independence is nature's own end. Hence M yearns for F's desire and therefore woos rather than trying to subjugate. The yearning for another's desire is now an ethical inclination originating in freedom rather than a natural inclination given by life. For her part, F identifies with the free will's particularism – its dependence on ends given by inclination. She is thus the locus of an inner contradiction between freedom from determination by biological inclination and having for the will's content nothing but ends given by life. She too, therefore, is the locus of a desire to overcome the contradiction by taking as her end M's independence as that whose need for her desire gives objective value to her psychic difference – her femininity. Accordingly, each desires the other's desire as confirmation for its end-status.

That each requires the other's free desire is the possibility condition of their being both preserved in mutual recognition. M's deference to F's spontaneity

realizes rather than negates M's independence, for F acts for the sake of M's independence. Equally, F's deference to M's independence realizes rather than negates her independent worth, for M requires her deference and defers in turn to F's spontaneous devotion. In this relationship there is no superior or inferior. Though different, each pole is objectively an end only through the other, and so the relationship is one of mutual complementarity between equal and interlocking partners: M is M-F; F is F-M. In marriage, the parties' union in love is perfected as each renounces its separate existence to form one bi-personal whole – a union-in-alterity. Also perfected, then, is the ethical quality of the parties' mutual desire, for their union now has a stable, public existence independent of their inward and fluctuating feeling.<sup>8</sup>

Love now provides the ethical energy connecting freedom and nature in interpenetrating wholes, while marriage supplies the context for a kind of labor whose product reflects the free will's end-status better than the tool. Labor is now a cooperative activity performed by husband and wife for their common benefit. The product of this labor is the household capital – its accumulated stock of wealth. Like the tool, household capital represents foregone satisfaction for the sake of an assured stream of satisfactions. But whereas the tool embodied the free will's one-sided activity upon a will-less nature, the household capital embodies the bi-personal whole formed by the mutual recognition between a detached freedom and a free sentimentality. Hegel calls the household capital a "middle term" between husband and wife. The concept of the middle term is perhaps the most important in Hegel's philosophy of mind, and so we should pause to clarify it.

In general, a middle term is a bond, inherent in reality or Nature, connecting two antithetical extremes in a union of complements that is distinct from either. The union, moreover, is non-reductive of the extremes' mutual alterity. So it joins the extremes dialectically – in an identity that preserves not just their distinctiveness within a single self-consciousness but their otherness within a bi-personal connection. Since the bond joins the extremes without reducing them, it is the possibility condition of each isolated (and otherwise antithetical) extreme's deferring to the other without loss to its separate reality. In other words, the middle term is a mediator – a union of complementary alterities wherein erstwhile opposites can be reconciled. In deferring to each other through the mediator, both extremes are "sublated" (*aufgehoben*) – that is, cancelled in their mutual isolation, preserved in their mutual alterity, and raised to their fulfilled states. With this movement, the middle term, hitherto inchoate or inherent in Nature, crystallizes in a third entity, which can be a material thing (e.g. household wealth), a natural person (a child), or, more suitably, an intelligible entity such as marriage, a contract institution, or a social estate. As unities-in-otherness, all existent middle terms are particular manifestations of Spirit in human striving aimed at independence. Taken separately, each is inadequate for human independence; indeed, insofar as it embodies a human independence assumed to be the sovereign end of society

and state, each will subvert rather than realize human independence. But when collected and integrated into the narrative of Spirit's confirmation as the law of reality in and through the human ego's self-realization as an end, they will form necessary parts of the well-ordered political life sufficient for human independence.

We have already seen examples of an existent middle term. The tool is a middle term between physical nature and labor; in it, physical nature's externality is cancelled, yet preserved in its alterity and raised to a reflection of freedom. The marriage institution is the crystallized union-in-alterity of masculine and feminine psyches in erotic love. It is not, however, an adequate crystallization, for the union so far remains hidden in the inward emotions of the individuals. The outward embodiment of their union is the household capital – its land, livestock, tools, etc. *Qua* middle, household capital is separate from both the husband's and wife's personal possessions, for it is the product of their cooperative labor. Nevertheless it belongs to both equally. So, in working to produce the household capital each partner cancels its solitary labor, yet is sustained from the common store; and since the household capital embodies their marital union, both partners find fulfillment in augmenting it.<sup>9</sup>

Nevertheless, the household capital fails to embody adequately the marital union between husband and wife. That union signifies an overcoming of nature's externality such that, in depending on each other for fulfillment, both partners remain independent of anything external and indifferent to them. The household capital, however, is an external and soulless thing. It is therefore vulnerable to destruction and indifferent to the well-being of those it supports. To be sure, the sphere of subjective mind is distinguished precisely by the sensuous and hence external mode in which the middle term appears. Because the whole falls at this stage in the inward dispositions of individuals, it can exist objectively only as a third thing lying external to both.<sup>10</sup>

There are, however, different grades of "third thing." The parents' child is also a middle term synthesizing the qualities of husband and wife in a new person separate from either. Yet this third thing is not a soulless object. It is a free will in whom each partner can recognize the other and whom both can love as a fitting embodiment of their own love between free natures. Further, though the child is destined to leave them, it is also destined to form a family of its own, and from families come clans, from clans tribes, and from tribes the ethnic nation that endures throughout the coming and going of generations. The ethnic nation composed of families built on the erotic attraction between the masculine and the feminine is a union-in-alterity of the free will and nature raised above the evanescence of individuals and particular families. As such, it is a relatively stable middle term between masculine and feminine principles considered as opposites. Through the mediation of this term the universal family (masculine) and the particular family (feminine) can respect the other's independence without loss to its own, for each has the other within itself and so requires the other for completion: the universal is nothing but the

unity of *families* and the particular is a particular *unity* fulfilled in a unity of particulars. In their mutual respect, moreover, both the universal and the particular family have confirmation of their end-status through the other. Accordingly, in the ethnic nation's *faux*-immortality and seeming invulnerability we have the best possible middle term between the free will and nature (hence the best possible realization of independence) given the limits of subjective mind.<sup>11</sup>

The education of the child bursts these limits. The objective embodiment of the marital union actually subverts that unit as a self-sufficient community – as a community sufficient for independence. The aim of the child's education is its own independence. But the family has no room for the child's independence, for the family capital belongs to the parents whose union it embodies exclusively. So the adult offspring must create separate families with separate stocks of wealth. It thus comes about that many families confront one other as isolated units, each of whose capital is held to the exclusion of outsiders though its origin is but a *de facto* and unilateral acquisition.<sup>12</sup> Since no one can put others under a proprietary obligation by what he unilaterally does, the household capital is inherently insecure and so too is the independence of the parties resting on it. Accordingly, the independence-seeker cannot rest content within the confines of the family. He must seek a valid property.

### 2.3 *Unilateral Acquisition, Lordship, and Bondage*

The family having shown itself as insufficient for independence, the erstwhile family member now claims independence as an atomistic person. What the family claimed on the basis of cooperative labor, a common capital, and mutual care the individual now claims alone. He bases his claim on his capacity *qua* free will to detach himself from all inclination (love included) making him dependent on an other and to abstract away from all accidental peculiarities of mental and physical character. This cold abstraction is the person. The proof of its independence is the negation of the apparent independence of natural objects and their conversion into a valid property – into things of which he is the recognized master. Since acquisition is here directed neither to subsistence nor to the prerequisites of leisure but rather to the will's self-validation as nature's end, it knows no physical or moral constraints. The individual is a person; "therefore," says Hegel, "he is the power over all things."<sup>13</sup>

To begin with, the person acquires the objects around him with indifference to the will or needs of others. By virtue of his claimed end-status, he asserts a right to whatever unfree thing he acquires first. He acknowledges no limit to rightful acquisition in the life needs of others, because, in view of the free will's capacity for detachment from natural necessity, he views all natural needs as optional wants having no power to bind another. Indeed, not only is there a *permission* for limitless acquisition; since each person separately claims to be the fundamental end of things, there is at this point a will-generated *imperative*

to prove this claim through ceaseless acquisition. What for Hobbes was a natural and constant human desire for “power after power” is for Hegel a desire relative to the person’s first emergence from a community that has no place for its separate worth.

Still, rather than confirm the person’s independence, unilateral acquisition always contradicts it. This is so for two reasons. First, the person finds himself dependent on material objects for confirmation of his mastery of objects. So every satisfaction breeds a lack, hence a new desire *ad infinitum*. Second, what the person seeks is objective confirmation of its authority over nature, an authority of which it is as yet only subjectively certain. Such a proof can come only from an objective right to the things acquired, and yet such a right can never issue from the merely *de facto* and unilateral acquisition of objects by an isolated individual; for why should equal persons who themselves desire self-validation through an unlimited acquisition be bound by the unilateral acquisition of another? Only if possession is recognized by all competitors for the object can it be said to reflect an authority over the object that has objective validity. But what is thus demanded is that persons renounce the condition of mutual isolation and indifference.<sup>14</sup>

The first to reject this condition is the agent with the least stake in its continuance. The person who acquires objects excludes another from the means of his self-confirmation. He need not have taken everything in order to have effected this exclusion; for inasmuch as proof of end-status here requires an infinite acquisition, any quantity of exclusive possession makes such a proof impossible for another. In their mutual isolation, therefore, both agents are dissatisfied – the one because he is trapped in a monotonous alternation between satisfaction and lack, the other because he has been excluded from the means of satisfaction. It is only the excluded agent, however, who is aware of the true reason for his dissatisfaction; “for he is [only] for himself because he is nothing for the other, because he is excluded from being by the other.”<sup>15</sup> While the possessor thinks his unreality consists in the lack of yet some other object, the excluded agent knows that his consists in his having been unilaterally excluded – treated as someone to whom no consideration is due. So, whereas the possessor desires only further possession, the excluded agent desires recognition. In seeking self-confirmation, therefore, he will direct his activity not upon virgin nature but upon the other agent and upon nature only insofar as it has already been taken up into the other’s possession. He will seek not possession merely, but recognized possession.

The excluded agent “violates” the other’s acquisitions. This is no isolated taking over and done with in a moment. A take-and-run could hardly yield the kind of reality – recognized end-status – that the excluded agent seeks. Rather, it is an ongoing taking resulting from the taker’s reducing his victim to a serf who now acquires possessions for a lord. In the various iterations of the lord-bondsman tableau in Hegel’s works there is a common and striking theme. In every version, Hegel presents the relation as a voluntary one that is



relatively justified as an advance in human independence. The analysis in the *Jenenser Realphilosophie II* differs quite considerably from the famous one in the *Phenomenology* in that it presents the lord-bondsman relation as a stage in the development of property. It deserves independent study.

The reduction to serfdom of the acquisitive person cannot be explained by superior force alone. Far more is his submission a voluntary tribute to an independence he acknowledges as more real than his own. His independence had been a mirage. Because his desire for validation was still enmeshed with an appetite for things, his independence had vanished in the very act of realizing it. Hence his appetite for things was insatiable. His attacker, by contrast, had displayed a will contemptuous of material objects as such, desiring things only insofar as they were yielded up to him by another. Thus his intellectual desire for validation as a final end had an appropriate intellectual object: not the material thing itself but recognition for the mastery of things he was spared the indignity of acquiring directly.

Nor was this the only basis of the master's relative right. Prior to being attacked, the possessor could assume that, given the end-status inherent in self-hood, whatever selfless thing he acquired first was rightfully his. Indifferent to the impact of his acquisition on others, he could entertain the illusion of security. He was, however, rudely undeceived. The possessor's security melted before the onslaught of the agent who refused isolation, it being precisely his unreality. Because one agent's unilateral possession precluded the fulfillment of others, it was not rightful after all. Behind it lay only a subjective claim. It was just this inherent infirmity of the possessor's title that the attack made explicit and that the victim acknowledged by ceding his acquisitions to one whose claim to them was now recognized and validated.<sup>16</sup>

Nevertheless, no property can issue from the lord-bondsman relation and hence no validated end-status even for the lord. This is so because validation of ownership must come from an independent and equal other, or it is no validation. Recognition of ownership from someone himself owned by the lord is just the lord's one-sided assertion over again. It is the lord certifying his own claim. No more satisfying is the recognition obtained from someone else's bondsman, for someone who treats himself as a serf is not the free and independent *other* the putative owner requires. So the entire class of lords must be dissatisfied with the institution of serfdom. Because the ownership each lord claims is a right against all, recognition must come from all, and for their recognition to count, the all must be free and independent equals.

However, it is a puzzle how such a recognition could be forthcoming. First, how can the bondsman, who is fixed on material things, suddenly wrench himself free from them so as to qualify as a suitable partner in recognition for the lord? If the development toward independence is to be intelligible – free of leaps – there must be something in the lord-bondsman relation itself that explains (as his being of no account for the possessor explained the taker's rise to lordship) how the bondsman could rise to the level of the lord. Second,

even if he could detach himself from the love of things, how can the bondsman become the independent person the lord requires without having a bondsman for himself? The lord's independence, after all, required a serf to deal directly with nature. Standing between the lord and nature, the serf allowed the lord to have objects of need yielded up to him while the serf struggled against nature's indifferent externality. So how can there be independence for all such that a valid property can exist? Third, recall that the project of realizing the atomistic person's end-status vis-à-vis nature required an infinite acquisition that made each a competitor of all. How then can one independent person recognize another's right to exclusive possession without foreclosing his own opportunity for self-validation? How, in other words, can a right to exclusive possession be reconciled with untrammelled freedom of acquisition? These problems are for objective mind to solve.

### 3 Objective Mind

As a subjective mind emergent from but limited by nature, the free will could obtain no reflection of its end-status in nature that did not contradict its end-status. Whether in the tool, the family capital, the child, the ethnic nation, material possessions, or the bondsman enmeshed in natural appetite, the free will depended for its realization on the very nature it sought to master.

The next phase of the free will's development is called "objective mind" because in it the free will generates an objective world from itself rather than informing one already given. The self-detachment hitherto achieved by a class of lords is at this stage achieved by all, and their mutual recognition for this feat creates a social, juridical, and finally a political connection whose origins are thoroughly intellectual. Nevertheless, objective mind too will reveal itself as a finite mind limited by an external other. In this case, however, the external other is not the physical nature we find around us; it is rather the free will of the atomistic person, who at this stage takes itself to be by nature solitary (not a social or political animal) and egocentric because owing its end-status solely to its innate free will. That is to say, the limit of objective mind is the state of anarchy moderns call "the state of nature."

#### *3.1 The Division of Labor: Liberating and Depersonalizing Dimensions*

Let us return to the three problems with which we closed the discussion of subjective mind, taking the first two together. The lord requires recognition of his ownership from an independent equal, but how can we explain the bondsman's becoming a suitable partner for him, and how can he do so without himself having a bondsman?

Within the lord-bondsman relation, one agent labored on nature for the sake of another's independence of nature. Thanks to the bondsman's labor, the lord could avoid dealing with nature in its indifferent externality while having its

products delivered up to him for consumption, in which the thing's independence is negated. Here, then, labor was the condition for the independence of the man of leisure.

However, labor can be liberating for the laborer himself provided it is performed socially. For in that case, the laborer can renounce the immediate satisfaction of his material needs and produce a single item for others, confident that others will do likewise for him. Through the social division of labor, the laborer achieves the detachment from need he could not achieve alone while allowing others to do the same. This also explains how the bondsman can become an independent person without having a bondsman of his own. By virtue of the division of labor, the labor of each is the condition for the emancipation of all from natural necessity. No one having to look after all his needs, everyone has the possibility of some leisure. In effect, each performs the work of the bondsman for the other, but no one is a bondsman, for the service is fully reciprocal. Of course, even in performing his narrow task, the laborer must still deal with nature in its indifferent externality. But not even this problem is intractable. The endless division of labor leads to a micro-specialization of tasks to the point where machines can be substituted for human labor, creating the possibility for more leisure. The machine replaces the bondsman as the intermediary between the free will and nature.<sup>17</sup>

There is, however, a dark side to all this. This side is given more emphasis in the *Jenenser Realphilosophie II* than in all published versions of the philosophy of objective mind (though it is there as well). This is why it suits better our present purpose, which is to show the practical role of Hegel's philosophy in overcoming the negative consequences of modern atomism. To exhibit the dark side of objective mind is to show the internal nemesis into which the independence project falls when the *sole* agent of that project is the atomistic person – that is, when the solitary person's independence is taken to be the fundamental end of society, law, and the state. It is thus to give an immanent critique of modern atomism. In presenting this critique, Hegel anticipates many insights of Marx, but he does not draw Marx's unqualifiedly anti-atomist conclusions. Rather, he shows how fulfilling the person's quest for independence requires re-centering the narrative of independence such that the atomistic person is not sole protagonist but partner.

Hegel presents the negative side of the independence-promoting division and mechanization of labor as follows. When labor is abstracted from the immediate satisfaction of the laborer's needs, labor itself turns into something abstract – disconnected from the laborer's autonomous agency. The agent is no longer the ultimate purpose and center of a variety of operations and functions but is instead immersed in one small function; control of the entirety is either absent or it resides somewhere else. As a consequence, labor itself becomes mindless and mechanical; the laborer's agency disappears into the machine, of which his arms and hands are extensions. What was supposed to have facilitated the ego's independence of things turns it into a thing. Hegel writes: "Since

his work is of an abstract nature, [the worker] behaves as an abstract self or in the manner of a thing, not as a comprehensive, content-rich, all-embracing spirit who rules over a broad compass and is master over it."<sup>18</sup>

Why is this outcome a necessary consequence of modern atomism? Hegel's idea is this. If the atomistic individual is taken as a fixed reality (if the human being is by nature asocial, owing its dignity to itself alone), then the determinate individual (this particular individual) is identified with the immediately given or natural individual, not with the individual who *becomes* an individuated realizer (analogously to a performing artist) of a civic good, for that is considered an artificial existence. This means that the individual agent's independence of nature is conceivable only as a flight from its particularity or determinateness as such into its abstract personhood or free will. The latter side of the particularized ego is now the only one salient for the law enjoining respect for independence. But then the determinate individual is left to the realm of necessity, dependence, and thinghood. The human being is thus bifurcated into independent and dependent sides. *Qua* person he is lord of himself and of things, but *qua* individual, he himself is a thing.

The division and mechanization of labor illustrate this outcome. The laborer conceives independence as requiring escape from labor as such because he identifies labor with work for natural need; so he equates independence with the narrowing of labor to a simple and routine task and with leaving most of the work to machines. But then his own labor, instead of being an autonomous, creative, and fulfilling activity, becomes machine-like. Because, moreover, the possibility of independence is thought to belong to the abstract person alone (hence to the formal realm of legal right), atomistic society is resigned to this outcome and to others like it. We'll see atomism's nemesis in several other features of modern society and the state.

### 3.2 Market Exchange: The Realization and Negation of Independence

In labor abstracted from natural necessity, the person's independence of nature is incomplete. No doubt the artisan who produces only cabinets has foregone the immediate satisfaction of his needs and risen thereby to personhood. Nevertheless, he is not truly independent of nature so long as he only recoils from it; he must also cancel nature's apparent independence and reduce nature to a reflection of his own end-status. This he partly does in production. By producing a cabinet, he turns raw materials into a *form* that embodies his agency. But because the solitary person acquired the raw materials unilaterally, his ownership of the *matter* is still only a subjective claim of title requiring recognition by all those it purports to exclude.<sup>19</sup> As we've seen, moreover, recognition of the kind accorded a lord by a bondsman will not suffice; only the recognition of a free and independent equal will count as validation. This brings us to the third problem we posed earlier. How can persons who separately claim to be the end of things recognize each other's unilateral acquisition without making the objective validation of their respective claims impossible?

Hegel's answer is exchange.<sup>20</sup> Each artisan surrenders his *de facto* possession to another and receives back an equivalent value as recognized property. In that it alienates its possession, the agent reveals itself as one capable of detachment from material possessions – that is, as an independent person qualified to recognize the ownership (hence end-status) of another. In that the other freely transfers an equivalent value to him, the first agent gains a recognized ownership both of the value of what he alienates and of the thing he receives in return. However, recognition is not simply bilateral between the parties to the exchange. If the exchange took place in a milieu where all others had an opportunity to bid for the article, there is also a mutual recognition between the social multitude and the buyer.<sup>21</sup> This is so because, in passing on the article for sale, others in the market implicitly conceded it to the buyer chosen by the seller in return for the buyer's paying the social cost, reflected in the competitive market price, of their disappointment. That is an instance of mutual recognition between the universal and the particular, and it establishes a socially recognized property.<sup>22</sup> Moreover, each person can recognize the other's ownership without sacrificing its ambition for limitless dominion because each recognizes something as the other's only insofar as the other gives it to him.<sup>23</sup> This, then, is how the right to exclusive possession becomes compatible with the liberty of (and drive to) infinite acquisition. Only in the process of yielding up one's product to another after making it available to all does *de facto* exclusive possession become a right to exclusive possession.<sup>24</sup>

Observe that exchange is an existent middle term. Each agent cancels its isolated existence and surrenders its possession to another's ownership. Yet each is preserved and confirmed as an owner because the other does the same for him. The ownership of each is mediated through the deference of the other. Each *receives* his ownership of the thing from the other (and from the multitude). Private property is thus the product of a social connection between otherwise dissociated producers. Not only do the parties give up their unilaterally acquired possessions to obtain socially recognized property; they also give up their subjective valuations of things in favor of a valuation determined in common. Exchange value is thus the crystallized middle term between two self-interested and mutually indifferent egos. It is distinct from the private utility rankings of either party; yet neither party is unilaterally subordinated to the other's satisfaction because exchange value embodies a meeting of minds as to what is equivalent to what.<sup>25</sup>

However, if property is the offspring of a social connection, the conception of independence of which property is the realization is asocial. That conception assumes the naturalness or fixed reality of the atomistic (solitary) agent, who is self-interested and indifferent to others. But the independence of an atomistic agent is attainable only by a withdrawal from the determinate individual's dependence into the refuge of free will or personhood, leaving the determinate individual to the (so far) unregulated caprices of other self-interested agents. So, when, in pursuit of reality for its independence, the agent surrenders its

value-judgments to a market determination of exchange value, it makes itself dependent on the very anarchic forces from which it initially withdrew. The social bond that was supposed to confirm the agent's independence vis-à-vis nature actually exposes it to the unconstrained natural (self-interested) wills of other agents.<sup>26</sup> In Hegel's technical terms, the objective realization (*Verwirklichung*) of independence takes the self-contradictory form of an alienation (*Entäusserung*) thereof, with the result that the supposed objective reality of independence (here exchange value) now stands estranged (*entfremdet*) from the agent – out of its control.

The agent's vulnerability to (so far) unconstrained market forces reveals the gulf between the agent's formal independence *qua* free will and its real dependence *qua* determinate individual; it does not yet reveal the self-contradictoriness of the free will itself as the locus of independence. Not until society achieves the sophistication of contractual exchange does this latent contradiction surface.

In contract, personality rises to its purest level of abstraction. Hitherto, the person's supposedly unconditioned end-status was realized only from one material transaction to the next; hence it was self-contradictorily dependent on a temporal act of exchange. Absurdly, the person was an absolute end only for the moment. Moreover, in a material exchange, the abstract person's intellectual desire to realize its independence in recognized property is still entangled with the natural individual's appetite for material things; hence the road to independence leads once again in the opposite direction.

An executory contract, however, is what Hegel calls an "ideal exchange."<sup>27</sup> It is an exchange not of material things but of promises to exchange things in the future. Once the promises are exchanged in offer and acceptance, the goods are in law transferred, so that each party has a present right to a future state of affairs. If one party reneges, the other has a right to be compensated not simply for expenses incurred in relying on the promise but for what he would have had if the promise had been performed. In this way, a contract embodies a unity of wills purified in a double sense. By virtue of being held to their *respective* promises, the parties' wills are freed from determination by momentary appetite; by virtue of being held to their *mutual* promises, their mutual recognition as owners is freed from temporality and material exchange. With a present right to a future state of affairs, the person is recognized as an owner not merely in this empirical now but in an intellectual now that equates to timelessness.<sup>28</sup>

Hegel sees the contract institution as the climax of the atomistic person's drive to gain objective confirmation of its end-status vis-à-vis nature. It is the best realization of the solitary person's independence – a fully adequate validation of its claim to be an absolute end. Not only does the person have a socially recognized ownership of value that is independent of the temporal exchange of material things; it also has, by virtue of such an ownership, a mastery of temporality itself. The future the parties bargained for is theirs now. Each has

a right to the other's fulfilling his expectation and a right against interference with his expectation by outsiders (inducing breach of contract is a wrong).

However, the best realization of the atomistic person's end-status, Hegel shows us, is also the negation thereof. This is so because, by effecting a separation between word and deed, contract creates the possibility of a wrong against property while, at this stage, making such a wrong permissible. Prior to contract, a violation of property was *stricto sensu* impossible because property had not yet been perfected. There could be violations of superior claims or of relative rights *in personam* (for example, of a prior possessor by a squatter) but there could not be violations of absolute rights against all (rights *in rem*) because none yet existed. The executory contract produces a perfect property and, by separating promise and performance, makes it possible for a person to violate it by refusing to compensate his contracting partner for what he knows is an inexcusable breach of contract. Moreover, at the stage where the atomistic free will claims to be the most fundamental end, this possibility, says Hegel, is something the person has a permission to actualize. How so?

As the end for the sake of whose realization the contract was formed, the atomistic will remains superior to the parties' common will (*gemeinsame Wille*) expressed in the contract. The common will is here but a means to the atomistic person's independence. No doubt, the parties' mutual recognition in exchanging promises validated a property right each is bound to respect. But, says Hegel, the obligation has limited force. Recall that self-consciousness is here split into abstract person and determinate individual, where only the former is a bearer of final worth or end-status. Accordingly, a contractual obligation binds the person to restrain the determinate individual's appetite for the greater satisfaction he could obtain by breaching his contract; it cannot bind the person against itself, for the person is here more fundamental than the contract in which its ownership was realized. In Hegel's words, "[t]he compulsion applies not to the person, but only to his determinateness, to his existence."<sup>29</sup> So a breach of contract in order to pursue a more profitable opportunity is wrong, but a breach of contract just to assert the free will's supremacy is permissible. At this juncture, one could say, only the most flagrant wrong is permitted. But then market society is a rightless condition in which contracts are normatively hostage to the free will of the parties.

### 3.3 Crime, Retribution, and the Cycle of Wrong

The inherent illusoriness of property in a society ordered to the atomistic ego is made manifest in crime, in which the wrongdoer, by virtue of an intentional act of coercion, explicitly claims permission to invade market-recognized boundaries. Crimes against property need not be violations of contractual obligations. Since the contract institution lends full proprietary force to holdings resulting from voluntary market transactions, all intentional takings of such holdings are now property crimes. Hegel's *Jenenser* account of crime, revenge, and punishment bears an interesting feature missing from his later accounts,

for here he must explain how the criminal act differs from the aggression that resulted in the relation of lord and bondsman. The later versions of the philosophy of objective mind begin at a point where that relation has already been surpassed.

The criminal is not yet normatively aberrant. Rather, he simply acts out the anarchic principle on which market society is so far based. Taking as fundamental the free will's capacity for unconstrained choice, the anarchist treats absolute freedom as a natural right and contract as a conventional means to secure other wills to its ends. So even in choosing to abide by its contract, the agent is implicitly an anarchist, for it acknowledges no binding obligation to do so; its rectitude is a hypocritical show. In openly flouting its contractual obligation (a proprietary one, recall), the agent becomes an honest anarchist. It now opposes the free will's formal independence to its realized independence in exchange-mediated and socially recognized property. But then the anarchist's principle is inherently self-contradictory: it affirms a natural right to an unlimited liberty that makes rights against interferences with liberty non-existent.

The anarchist is unlike the aggressor in a pre-market condition. He does not seek recognition for his end-status from someone who disregarded his equal interest in acquisition by claiming unilaterally possessed objects as property. His end-status is already recognized in market exchange, and his disrespect for property simply executes one side of this achievement against the other. The agent's formal independence is validated in socially recognized ownership, but the anarchist isolates the formal side and absolutizes it at the expense of its reality. In doing so, however, he provokes the other side – the general will (*allgemeine Wille*) tacitly existent in the market – to rise up and remind him of its importance.<sup>30</sup> This it does by executing the self-contradiction involved in the anarchist's principle so as to annul liberty's absolutist claims and vindicate equal liberty as the sole ground of valid rights. To execute the self-contradiction inherent in the anarchist's principle is to treat the anarchist as rightless by forcibly restraining him or taking his holdings – by retaliating proportionately against him. When the general will works through the agency of the victim, retaliation is revenge.

The victim of crime has likewise moved forward from the victim of aggression in the pre-market condition. When attacked within the setting of a household economy, the victim did not retaliate. He submitted to his assailant, ceded his holdings to him, and worked for the sake of the independence of his lord, who allowed him only enough for subsistence. He did all this voluntarily, recall, because he learned the subjectivity of his title to holdings from which he unilaterally excluded others and saw in the aggressor's willingness to risk his life for recognition a freedom from natural necessity more radical than his own. Serving such a freedom realized it (albeit inadequately) for the lord and conferred rational importance on the serf.

In a market society, however, a victim of force is not so easily awed. Thanks to the division of labor, the introduction of machines, and the development of



exchange and contract, everyone has achieved the lord's liberation from natural necessity, and everyone has won social recognition for his ownership of what he holds, hence for his end-status as a person. This socially recognized end-status, says Hegel, is a person's "honor." The producer in a market economy has attained it; the producer in a household economy had not. It follows that taking someone's holdings means something different in a market economy than it did in a household economy. It means not only the infliction of a material loss but also a violation of recognized ownership. And because the person's end-status is objective only in ownership, violating ownership now signifies dishonoring the person – lowering it from a dignity it had achieved. In this context, therefore, the victim is moved to respond in order to restore his honor. What form must his response take?

In responding to a taking, the victim of crime shows that he has learned the connection between honor and socially recognized property that the anarchist treated as severable. He affirms the principle that a violation of his property is an offense against the dignity of his person.<sup>31</sup> But here a distinction is called for between the dignity of *his* person and the dignity of personhood *in* him. Vindicating the dignity of *his* person requires only that the transaction that lowered him be erased by a reverse transaction returning taker and victim to the position of equality represented by their pre-transaction holdings. This is corrective justice, which consists in the taker's returning to the victim what the market has recognized as his. Absent a public authority to coerce him to do so, the victim has a relative permission of self-help. That is one form the response must take.

However, vindicating the dignity of personhood *in* the victim requires more. This is so because, while restitution restores the parties to equality, it does not address the anarchist's denial of the normative force of equality. The anarchist, after all, asserted the supremacy of his particular freedom over the equal dignity recognized in the market. In violating *this* person's ownership, he implicitly denied the right of personality as such. Accordingly, vindicating the dignity of personhood requires that the anarchist's right-denying principle be invalidated by manifesting in existence its self-contradictory implications. This is retributive justice, which consists in retaliating proportionately against the aggressor. Absent a fitting representative of the general will, it falls to the victim to execute retributive justice in the form of revenge. For this too he has a relative permission. That is the second form the victim's response must take.

Revenge bridges the gulf between anarchy and the rule of law. Through it, the general will dormant in market exchange awakens and, in acting out the self-destructive consequence of the anarchist's principle, gains the normative supremacy it has so far lacked. From conventional right it becomes the new natural right. This occurs, argues Hegel, because the avenger's manifesting the self-contradiction of the anarchist's principle proves the normative authority of the general will as the sole ground of valid rights. Hitherto a means to the confirmed end-status of the particular will, the general will frees itself from the

latter's primacy and obtains proof of its natural authority through the revealed incoherence of anarchy's right.<sup>32</sup>

At the same time, revenge reveals its own failings as an engine of this process. As long as the general will's validation is tied to the victim's desire to vindicate his particular honor (an aim requiring only restitution), retaliation appears as passionate excess calling for an endless cycle of retaliation. Moreover, just as revenge is inadequate to retributive justice, so is self-help inadequate to corrective justice, which requires an impartial determination of what is owed whom. Without it, the taker does no wrong in resisting the restitution-seeker, and so property remains normatively insecure. Accordingly, what is lacking to the independence project in both cases is a fitting agent of the general will. But with the lack is revealed the logical necessity.

### 3.4 *The Sovereignty and Corruption of the General Will*

In society viewed as a state of moral anarchy, the objective reality of the person's claim to end-status was an object alien and indifferent to it – a market free of regulation for the sake of independence and abandoned to the anarchistic principle of natural right affirmed by Hobbes. The kind of state necessarily emergent from this society is the despotic one that Hobbes describes. Given a natural right to unlimited liberty, right and wrong are logically possible only through alienating this right to an artificial sovereign who now has all the liberty the subject had. This sovereign cannot wrong his subjects because, everything being permitted before, the acts proceeding from his will create the distinction between right and wrong. To gain independence from the unconstrained will of persons roughly equal in power to himself, the person submits to the unconstrained will of a vastly more powerful sovereign.

However, Hegel's logical moves from contract through crime to revenge show the inherent transience of Hobbes's absolutist state and so explain the logic of its historical passing. Through those moves, a civil society of unmitigated heteronomy logically transitions to one wherein autonomy is self-consciously promoted. The objective reality of the person's claim to end-status is its general recognition in contractual exchange now raised to a fundamental norm and enforced by officials to whom individuals have surrendered their private rights of enforcement but not the rights they enforced. Now perfected against private interpretation, these primary rights are actualized against wrongdoers whose claim of right is now known to be mere show or pretense. Inwardly secure against the anarchist's principle, the general will exacts retribution monopolistically and without excess.<sup>33</sup> Finally, in submitting to law's authority, the person remains autonomous, for authority is now constrained to act as a general will providing equal protection for all in their liberty and property and subordinating none to the interests of others.

We have passed, then, from a civil society ordered to the particular will's primacy to one governed by a general will. This is the civil society that Rousseau and Kant saw as the just society. It is also the civil society both saw as providing

the best realization of human independence of which life under state power is capable (though not the best simply). Hegel now proceeds to show that they were wrong on both counts.

The transition from a civil society premised on untrammelled liberty to one giving force to the law of mutual recognition implicit in the market produces little change in the character of economic life. On consideration, this is not surprising. The institution of exchange-mediated property embodies a general will of otherwise atomistic and mutually indifferent persons. Its purpose was to give reality to the *atomistic* person's claim of end-status vis-à-vis things – a reality that, we saw, required unlimited acquisition. Now it was only to perfect this institution and hence to further this project that the general will's implicit normative authority was constituted with political force. So, the isolated person is still ascribed a fixed reality, its pre-political end of unlimited acquisition providing the starting-point and purpose for political union under law.

However, if the isolated individual is accorded a fixed reality, then the determinate individual is equated with the isolated individual whose claim to end-status conflicts and therefore competes with the same claim of others. Hence the general will must be defined by exclusion of, and opposition to, the determinate individual as such. It is thus an abstract universal in which the individual exists as a generic person with universal interests in secure liberty and property but not as a determinate individual with particular interests. A dichotomy thus opens up between the citizen and the determinate individual and hence between public and private sectors of civil society. The public sector alone is the state, in whose law-giving assembly the individual reasonably wills only what all independent ends could will and is therefore autonomous; the private sector is the market, where the individual rationally pursues particularistic or private ends exposed to chance. Since the state is now narrowly identified with the public *sector*, its authority to realize the agent's independence now *opposes* the liberty of rightful acquisition in the market. As the end of political union under the general will, that liberty persists as a fundamental principle, and so regulation of the market for the sake of independence must take the form of an external restraint on an internally unrestrained liberty. This has two consequences. One, the market continually produces states of affairs inimical to independence. Two, in regulating market liberty for the sake of independence, the state appears as a hostile and partial force curbing the very principle for the sake of which it was established. Let us consider both in turn.

In the market, Hegel says, the individual's "only law is that whatever he produces and exchanges is his."<sup>34</sup> Society, in other words, is still a stage upon which self-interested and mutually indifferent persons seek honor through acquisition, and this project continues to be defeated by their exposure to the blind market forces engendered by it. Artisans put out of business by factory owners are forced to become wage-laborers whom market collapses for their product reduce to unemployment and poverty. Hegel's description of these conditions

merits quoting, for it reveals a social critic whose critical voice has not yet been subordinated to the project of presenting the world as inherently rational:

The skill of the individual is the possibility of the preservation of his existence. This is subject to the total confusion and contingency of the whole. A mass of people are condemned to the stupefying, unhealthy, insecure, and skill-oriented factories ... mines, etc. Branches of industry which supported a large class of the population suddenly fold owing to a change of fashion or to a fall in the value of their product brought on by inventions in other countries etc. This whole mass is thus abandoned to a poverty from which there is no escape. The opposition between great wealth and great poverty appears, a poverty impossible to alleviate ... This inequality of wealth and poverty, this need and necessity effects the utmost laceration of will, inner rebellion and hatred.<sup>35</sup>

The state in a civil society governed by the general will cannot remain indifferent to this turmoil. Although the market morality it was instituted to enforce contained only prohibitions against interferences with body and property, the general will state (*Rechtsstaat*) is more than policemen, courts, bailiffs, and prisons. It is also a welfare bureaucracy. This is so because the elevation of the general will from a market to a political morality engenders an expansion of the entitlements that subjects of political authority have. Specifically, it entails that subjects of the general will have a positive right to the basic material conditions of living independently in accordance with their self-determined goals. This expansion of state obligations and functions can be explained in the following way.

The general will's political authority entails that the subject is now potentially an autonomous citizen subject only to laws he can give himself. Formerly defined solely as a free will capable of choosing among subjective ends, the human individual is now also inherently an autonomous or self-governing will. Achieving that potential is a *common good*. Moreover, advancing this good requires more than making all subjects equal citizens. If political authority is justified as the authority of a general will, then it is justified only insofar as it can be accepted by all subjects regarded as independent ends. But if it only protected property, the state would become an instrument of the propertied class once the competition for wealth-based honor created a class of landless and capital-less workers dependent on self-interested owners for subsistence and a class of unemployed paupers for whom the property institution stands in the way of their survival. For these classes, the state's claim to represent the general will would mask its subordination to a class interest.

Accordingly, for the sake of its justified authority, Hegel says, the general will state acts as a "general supervisor." It tries to ensure the employment of the "suffering classes," erects institutions to care for the poor, and through a system of direct and indirect taxation moderates inequalities of wealth.<sup>36</sup> Yet, observes Hegel, none of this activity fundamentally impairs the welfare-blind freedom of acquisition permitted in the private sector. The market remains "a field of caprice" where persons owe each other no affirmative duties of care

and where state intervention for the common welfare must strive to remain “as inconspicuous as possible” lest the public authority become identified with one of the conflicting classes.<sup>37</sup>

However, Hegel says, this effort is self-defeating. In striving to remain neutral vis-à-vis competing class interests, the state can regulate the conflict only as an external power opposed to the freedom of rightful acquisition it was instituted to protect. As a consequence, the state comes to embody a particular interest opposed to the interests of private individuals and associations. This antagonism between state and society flares up most frequently over taxation, on account of which the private sector views the state as itself acquisitive and as interfering with rightful private enjoyment. Hegel writes:

The tax system must settle everywhere; it must appear insignificant: a little from all, but everywhere... But this necessity turns equally against itself. The costs of collection become all the more considerable, financial distress and discontent grow as enjoyment is disturbed for all and tied up with elaborate formalities.<sup>38</sup>

The state’s partiality is experienced, Hegel says, even in the administration of corrective and retributive justice. It was primarily in his relationship to law, the possibility condition of property and the guarantor of contracts, that the individual was to have been delivered from dependence on the arbitrary will of others. In contrast to his vulnerability to a chaotic market, his subjection to the rule of law was to have been a free subjection to his own law-giving will. Yet here too an element of arbitrary force creeps in. A fair trial is a long one, since all avenues of appeal must be exhausted. But this requirement entails prohibitive legal expenses for the poor and so slants the judicial process in favor of the wealthy.<sup>39</sup> Government programs promoting equal access to justice do not cure but merely manage a problem of gross inequality continually reproduced by the market. Moreover, a residual arbitrariness is inevitable in applying general laws to particular cases. Because no result is conceptually determined, an opening exists for judicial discretion. Is this misrepresentation unwitting or fraudulent? Is this taking a theft or a robbery? In itself the arbitrary element is natural to law’s realization and so not inherently inconsistent with administering justice. However, given the state’s partiality as an abstract general will set against a determinate individual whose particular interests are denied entry into the state, the indeterminacy of judgment is justifiably viewed as being filled in by the elite bias of the judge.<sup>40</sup>

Accordingly, in his relationship both to the market and the state, the determinate individual’s independence is negated by his subjection to an external power. Conversely, the general will, though abstracted from the market’s particularism, finds itself embroiled in a particularism of its own – a particularism it cannot, just because its impartiality depends on repelling particularity, survive. The rule of impersonal law – the *Rechtsstaat* – has turned out to be more an aspiration than a reality. Civil society has proved incapable of either securing the individual’s independence or manifesting itself as just.

For Hegel, the opposition between a welfare state of equal citizens and a market given over to welfare-blind, inequality-producing freedom of acquisition is the limit of what an individual-centered political morality of autonomy can contribute to human independence. Put otherwise, it is the limit of what a Kantian political morality can contribute. It is not, however, the limit of what political life can rationally hope for and attain. Rather, argues Hegel, the shortfall from the *Rechtsstaat* of a civil society ordered to the natural individual's reasonable will points to a transcendent Will independent of the natural individual. Ominously, Hegel equates the transcendent Will with the will of a *Volk*. Even more ominously, he calls the *Volk* "*der gottliche Geist*."<sup>41</sup>

### 3.5 *The Volk and its Self-Contradictory Existence in War*

Hitherto the general will has uncritically assumed the naturalness (fixity) of the isolated person. Not a genuinely free will, therefore, the general will has been conditioned as a will emptied of determinacy by the atomistic individual it abstracted from. If the determinate individual is assumed to be the isolated individual, then a general will is attainable only by flight from determinateness as such into an abstract law for identical persons – a law repellant of, and standing aloof from, particular interests. In this juxtaposition, the general will becomes itself something partial and particular. Concomitantly, the determinate individual is left just as he was: insular, self-aggrandizing, and indifferent to the welfare of others. His particular interests are thus equated with selfish interests, the pursuit of which is regulated *ab extra* by a government that cannot admit those interests into its councils without tainting its (*faux*) impartiality. Because, finally, the general will lacks an autonomous reality, its authority has no other justificatory end but to serve the very atomistic person whose non-wrongful acquisitiveness it must also regulate, both for the sake of its legitimacy and to the detriment thereof.

From these conundrums of modern civil society (whence the conflict between today's pro-regulation and anti-regulation political parties) Hegel concludes that the way forward is, at least initially, backward. It is to recommence at the non-atomistic standpoint of classical Greece. Let the pure will of each atomistic individual become the universal will of an organized people, and let this will unfold its nature autonomously – unburdened by assumptions about the fixed reality of the isolated individual. This transcendent Will Hegel calls Spirit.

Set free from the natural individual, Spirit is no longer an abstract general will exclusive of a particular will. Rather it is a unity-in-otherness of the universal and the particular will, where the universal is confirmed as the common good by the free civic-mindedness of the determinate individual, which attains its rational worth through the universal's need for, and deference to, its spontaneous virtue. This mutual recognition of the universal and the particular is no stranger to us. We have seen it in the market's confirmation of ownership in return for the buyer's bearing the cost of all others' frustration; and we have seen it in the public authority's accountability to a citizen assembly, in which

the individual reciprocally judges from a public standpoint. In neither of these venues, however, is Spirit's structure intentionally embodied; rather, it glimmers there in activity directed at another purpose – the realization of the individual person's claim to end-status. Where, then, is Spirit self-consciously and perfectly embodied?

Hegel's answer is: only in the entire community (*Gemeinwesen*) or "living people" (*lebendiges Volk*) of which public and private sectors are mutually limiting and complementary parts.<sup>42</sup> The complementary relation between public and private divisions of one political community is the archetype of mutual recognition, of which the market and the assembly are coordinate instances. The *Gemeinwesen* is a Whole composed of constituent wholes, each reflecting in a microcosm the totality's structure of reciprocal subordination.

By the term *Volk* Hegel means something different from the ethnic entity belonging to subjective mind and idolized by such German nationalists of his era as Herder and Fries. Whereas they meant "nation," he means "people" – a term that might or might not be co-extensive with an ethnic group but that necessarily denotes a body politic. Considered apart from its political existence, the people is for Hegel either a "formless mass" or an un-self-conscious and unrecognized unity cemented by pre-rational commonalities such as blood, character traits, folklore, and language.<sup>43</sup> The *Volk* is not the people so considered, nor indeed is such an entity fully a people. For Hegel, rather, "people" denotes a civic body whose corporate Will exists independently of any natural individual but which depends for its authority on the recognition of determinate individuals who, for the sake of their good, have placed themselves into a relationship with it. Only as an organized body politic is the multitude a people, and a multitude so organized is a people irrespective of its ethno-linguistic diversity. So, what at first seemed an obscurantist turn for Hegel turns out not to be. What defines a *Volk* for him is not race or ethnicity but a political organization – a state.<sup>44</sup> The state is not simply the political agent of an ethnic unit. It is the people organized for the common good of independence.

Henceforward, I'll write "State" to designate the entity embracing public and private divisions of a unified people and "state" to designate the public sector of civil society set over against a private sector of atomistic individuals.

If Hegel's turn to the *Volk* is not a turn to nationalism, neither is his divinization of the *Volk* a move toward totalitarianism. This is so because the people organized as a State for the common good is a "totality" in the technical sense in which Hegel employs this term. That is, the State overreaches rather than subsumes the particular interests of individuals and of the private associations they form. It is a unity that contains without dissolving the distinction between public and private sectors. So if a totalitarian state is one in which a distinct and autonomous private sector does not exist, then Hegel's state is not totalitarian. In this it differs from the ancient *polis*, which, as we'll see when we come to the *Phenomenology of Spirit*, had to force into citizenship (viewed as the hallmark of humanity) the very private individual (identified with animality) on

whose spontaneity the *polis* depended for confirmation as the good. This will not be necessary in modernity, for now the private individual is not simply an animal bent on self-preservation but an independent person who aims at validated self-worth. To the person's quest for validation the polity can now defer, for this quest will lead the person spontaneously to the political community sufficient for self-worth.

To be sure, Hegel's State is not liberal in the classical sense reserved for the state based on atomistic premises. It is not unilaterally a means to the security of atomistic persons and to the rightfulness of their acquisitions. On the contrary, as the *telos* of the individual, the State is, as Hegel says, the "power over all existence, property, and life" – a power it displays when its existence is threatened and that shows the inherent evanescence of all things immediate.<sup>45</sup> However, while not liberal in the classical sense, Hegel's State is *more* liberal than the state of classical liberalism. Indeed, we can say that it fulfills classical liberalism. How it does so will become clear when, in Chapters 5 and 6, we discuss Hegel's theory of constitutional limits on political authority; but we can briefly anticipate that discussion here.

Beginning from atomism, the state of classical liberalism always ends up as some form of despotism against which the individual is normatively defenseless. Where the individual's right to liberty is equated with the right of atomistic persons in a state of anarchy, civil order demands that this right or at least the right to interpret and enforce it be surrendered to a sovereign. The consequence of this transfer is that the sovereign either cannot wrong its subjects (Hobbes), or must wrong them by any decision procedure other than a unanimity rule incompatible with sovereignty (Rousseau),<sup>46</sup> or is unaccountable for its wrongs (Kant), or is limited by individual rights as determined by the legislative majority the rights are supposed to constrain (Locke), or as issuing from a utilitarian calculus against which the individual has no recourse (Bentham, Mill). Libertarian in starting-point, classical liberalism is invariably authoritarian in result. In offering a dichotomous choice between order/authoritarianism and anarchy/independence (excluding order/independence), its account of political obligation always reads like a morality play about the wages of pride.

By contrast, Hegel's account of political obligation ends up with a public authority limited by the enforceable, though not absolute, civil rights of persons who pursue their private ends autonomously in the market. Because anarchy is not humanity's natural state, we do not begin at a position from which individuals must alienate their natural rights or rights of enforcement to secure a rule of law and a rightful condition. Rather, we stand at an historical juncture at which civil society has evolved roughly in the way described above. At this juncture we liberal atomists give up atomism – the view that the person is by nature apolitical because a self-sufficient end – and acknowledge the political community as our end. But in return for this commitment we receive back as rationally approved (hence enforceable but conditionally defeasible) constraints on



public authority all the institutions embodying the end-status of the atomistic person – private property, the enforceability of private agreements, and a free market. Why do we receive them back? We do so because they are examples of mutual recognition in which Spirit's structure is confirmed as the matrix of valid worth claims out of the mouth of one who claims final worth in isolation – that is, independently confirmed; and because the State is the ensemble of all such examples, of which the regulatory state is only one more. So, while we give up atomism, we keep the separate ego, which is itself embedded in a relationship of mutual recognition between the public authority and determinate individual. Or one might say (to bring out the full paradoxical flavor of Hegel's solution) that we give up atomism but gain back embedded atomism.<sup>47</sup> This is why Hegel says that the concept of the free Will "is universality in the complete freedom and independence of the individual."<sup>48</sup>

The foregoing discussion should dispel our initial worry at Hegel's reference to "*der gottliche Geist*" without, however, airbrushing the words that caused the worry or serving up the sort of deflationary reading of Hegel's theism so common today. Make no mistake: Hegel divinizes a certain kind of state. However, when he calls the *Volk* "*der gottliche Geist*," he is divinizing neither a pre-rational ethnicity nor a civic body ordered solely by human intelligence. Rather, he is divinizing a bi-personal structure of mutual recognition where the two persons are the self of a collective body of which individuals are members and the self of an individual separate from that body. But since no human self-consciousness can overreach and contain the difference between two separate self-consciousnesses, the divinization of this structure (and of the State that perfectly manifests it) does not seem idolatrous or inappropriate. It is rather a fitting way of *distinguishing* this structure (and State) from the human self's unity, which, whether individual or collective, is always limited by the intractable otherness of another self. Hegel demystifies divine transcendence, but he does not collapse it. It now means distinction from humanity but not remoteness from and incommensurateness with humanity; for Spirit is not outside Nature. It is Nature. Moreover, Spirit's specific difference from humanity is not (as for Aristotle) incorporeality but boundlessness. As that which alone has no other *outside* it, Spirit alone is the Whole that makes political justice possible.

So, the term "Spirit" refers to the connection within a natural divinity between a collective ego and a separate ego in virtue of which each, for the sake of its own confirmed end-status, must recognize the other as an end. In civil society this connection is merely latent because unknown; the individual denies its political destiny, taking itself to be morally self-sufficient – a bearer of "innate right." But because the connection always exists, it manifests itself to insular selves in a disfigured shape – as the despotic power to which persons who regard themselves as self-sufficient ends *necessarily* submit for the sake of their most fundamental ends. The rational necessity of subjection to a Leviathan variously described by Hobbes, Locke, and Kant is for Hegel just the

individual person's political destiny acting upon it as a force negating its independence. Moreover, in civil society's opposition between state and market, we again see humanity's political nature acting upon it as an external, abstract, and repressive force. Not yet has Spirit appeared as an intentional connection between the collective will and the separate will such that both are preserved in their mutual submission. This, says Hegel, would be Spirit manifesting itself not only as power (*Gewalt*) but also as "forgiveness" (*Begnädigung*).<sup>49</sup>

It does so in war. Many false notions about Hegel's justification (which has been taken as a glorification) of war can be avoided by taking note of the specific context in which he regards it as necessary.<sup>50</sup> The context is "objective mind" where the person takes itself to be naturally apolitical and where the state therefore normally comes forward as an external power. Given this context and nothing to relativize it, war is the one solvent for the hard opposition between the universal and the particular will – the only means by which their inherent connection can manifest itself so as to preserve both the state's universality and the individual's independence.<sup>51</sup>

During war the usual assumptions about the priority of individual rights and the merely servant role of the state are suspended. The State becomes an end, its end-status realized in the subordination to its independence of individual lives and property. Yet its authority is not, as it is in peacetime, asserted one-sidedly against a self-interested individual; rather it is vindicated in the individual's patriotic sacrifice of life and property to a people, which, in turn, accepts the individual's extreme liberty, channeling it toward the enemy. Because recognition is mutual, both the universal and the particular will are preserved and their end-status realized. The universal is preserved despite enlisting the particular will, because in war the individual's risk of life for honor serves the State; it is fulfilled in that its power is confirmed as natural authority through the individual's acknowledging the State as worthy of its highest sacrifice. On its side, the particular will is preserved in its submission, because in war the State employs the extreme liberty it outlaws during peacetime; and in the warring State the particular will finds an ethical sanction for its otherwise wrongful license. So, absent knowledge of Spirit, war is the one mediator for civil society's opposition between the collective and the individual – that which alone permits each to submit to the other without self-loss. What qualifies war as a mediator is that it enlists individual license to the service of the State. "War," says Hegel, "is crime for the universal."<sup>52</sup>

Nevertheless, the political unity achieved in war is a defective realization of both the individual's and the State's independence. Where civil society's opposition between public and private sectors is thought to be a constant feature of political life, the inherent connectedness of the divisions in one State manifests itself as an unconscious force and external fate; and where fate takes the form of a war between whole populations foisted on them by external rulers, it is a catastrophe that falls on the individual's head – one by which everything

that seemed secure is shaken. Moreover, where the latent State depends for its explicit existence on distinguishing itself from foreign States, its autonomy is self-contradictorily exposed to the hazards of power in international relations.<sup>53</sup> These relations resemble those between individual persons in a hypothetical state of anarchy, since in both cases the particular will remains superior to its agreements, with the result that everything is permitted and each must regard the other as a potential enemy.

There, however, the parallel ends. For whereas the individual could enhance its independence by relinquishing its absolute liberty to a rule of law, the same act performed by the State could only diminish its independence. This is so because the isolated State is, while the isolated individual is not, a morally self-sufficient unit, having the means of its confirmation as an end within itself.<sup>54</sup> As the community sufficient for human independence, the State is under no conceptual imperative to make itself part of a larger unity. While it may therefore conclude treaties with other states, it cannot be required to relinquish to a higher authority its permission to interpret them; for it would thereby exchange a real potential for self-determination for determination by another. For this reason, argues Hegel, the rule of law in international relations will always remain an ineffectual ideal – a mere “ought” or aspiration. As for Kant’s vision of a world confederation of states bringing perpetual peace, this is either an “empty dream” or a recipe for one state’s domination of the rest.<sup>55</sup>

One might say, then, that if civil society is a fixture of modernity, an unsurpassable form of political life, then the latent State’s inherent strength is also its greatest weakness. It is potentially a Whole fusing public and private sectors into one entity; yet the condition of its actual unity – hostility toward other States – is such that it finds itself always vulnerable to the international balance of power, its vulnerability assured by its own inalienable sovereignty. Evidently, the only way to escape this dilemma would be for latent States to become explicit States independently of international politics – by means of their own internal constitutions.

Besides perfecting the internal life of States, this development would, Hegel thinks, alter the tenor of international relations even if it would not affect their basic structure. To be sure, the bare possibility of hostilities would remain, this possibility being intrinsic to a plurality of sovereignties. But one could conceive that aggressive wars would become rarer and more limited in their aims if the internal pressures of national unity were not their cause. Moreover, international tensions would be reduced, the susceptibility to national insult lowered, if a State’s unity were a positive function of its internal constitution rather than a reflexive product of its exclusiveness vis-à-vis other States. Indeed this very exclusiveness might become a mere formality as the differences between States paled in importance compared with their affinities in a way of life exemplifying Spirit. Such, at any rate, is the kind of world order anticipated by Hegel in the following passage from his lectures on the philosophy of history:

States in the modern world seek independence of one another, and this is their honour... But despite all the differences between the individual states... there also obtains a unity among them, and therefore we should view even political independence as a merely formal principle... The trend of the states is toward uniformity. There prevails among them one aim, one tendency, which is the cause of wars, alliances, and the needs of dynasties. But there also prevails among them another uniformity, which parallels the idea of hegemony in Greece, except now it is the hegemony of Spirit.<sup>56</sup>

The question that now forces itself upon us is: how can bifurcated civil societies achieve internal unity as States independently of their external relations? Such an achievement would, after all, imply the same mutual recognition of the universal and the particular will that occurs in war, yet without the lubricant of war to ensure the preservation of each. Except when turned outward, the rule of the collective welfare and the self-interested freedom of the separate individual are mutually antagonistic. How then can these polarities be fused without either perverting the public realm or submerging the private?

With this question we reach the limit of objective mind, hence of human action considered by itself. Because human practical reason confronts the givenness of the atomistic will, it can come forward only as a general will external and opposed to a socially indifferent particular will. Given the finitude of objective mind, therefore, no reconciliation of the extremes is possible apart from war. An answer to our question must therefore await a reinterpretation of objective mind from the standpoint of transcendent Spirit.

## 4 The Primacy of Spirit

### 4.1 *Hovering Between Two Standpoints*

Hitherto Hegel has viewed the realization of the ego's end-status as a project of humanity – whether of an eros-based community, of a natural person, or of the general will of natural persons. In the section of the *Realphilosophie II* entitled “Constitution,” he reinterprets that process in light of Spirit's project to realize *its* end-status vis-à-vis the individual ego. From this standpoint, of course, the primacy hitherto accorded the atomistic individual is but an appearance. Yet, *contra* Schelling, it is not an appearance that Spirit can do without. Rather, it is an appearance that Spirit necessarily posits within itself in order that, by the *independent* manifestation of the individual's self-sufficiency *as* an appearance, it might be vindicated as the natural individual's final end. Thus, Spirit's progress toward its known end-status is via the individual ego's autodidactic progress to the solid basis of its dignity and rights.<sup>57</sup>

From Hegel's new standpoint, moreover, the phenomena most important to the realization of end-status will be different from those salient at the former perspective. The institutions of private property and contract embodied an individualistic or person-centered mastery of nature and time. These now sink into the background, though, because they instantiate Spirit's mutual recognition of complementary alterities, not to disappear. More transparently reflecting

Spirit's unity of alterities are the social estates (*Stände*) that individuals unwittingly form in pursuing their private interests and by which they are integrated behind their back first into partial communities and then, through the intermediation of the latter, into the State as a Whole. I'll say something about estates in general and then deal with each in turn.

Because individual agents seek objective confirmation for their claims to dignity, they are impelled to cancel their isolation and relate themselves to others. Differences in the character of these relationships yield the various social estates. As a specific kind of mutual recognition between common and particular interests, each estate is a partial embodiment of Spirit. Taken together, the estates are rationally connected phases in Spirit's development from a nature-based community having no room for independent personality, to its self-division into antithetical extremes, to its restoration as a community self-consciously inclusive of independent personality. Accordingly, social estates are organic divisions of the life of Spirit, the existence of which as a self-conscious Whole is the rational political constitution. Essential parts of this constitution, social estates are the intermediaries that reconcile to each other State and determinate individual; they are the means by which the individual's particular interests become cognizable by the State and by which the State thus becomes an object of self-interested devotion for the individual.

Importantly, Hegel distinguishes between estates and classes (*Klassen*).<sup>58</sup> Estates gather individuals into groups that instantiate in various ways the mutual recognition structure of Spirit. As intermediaries between the State and the masses, they make possible the non-corrupting entry of particular interests into state assemblies and councils; hence they have an enduring place in the state conformable to the idea of the State as an impartial Whole. Classes, by contrast, are historically contingent products of the social antagonism between owners of capital and the non-owners who depend on them for work and subsistence. They have no place in the just State and, as we'll see, must have disappeared on their own – pursuant to a pre-Hegelian social morality – before the social estates' entry into the just State is possible.

The focus at this level, then, is on the unconscious products of individual volition. Nevertheless, Hegel cannot simply discount individual agency as it exists for itself. Merely to stress the unconscious integrative forces at work in society, while ignoring its overt atomism and conflict would be dogmatically to assert Spirit's end-status over against a recalcitrant world reduced to a non-essential appearance. If Spirit's end-status is objectively to be realized, it must be validated spontaneously from the side of individual self-consciousness, whose own point of view therefore counts equally with the philosopher's. This means that Hegel must comprehend each social estate not simply in accordance with a pre-established schema (as he did in earlier drafts of the philosophy of Spirit), but also as an outgrowth of a specific disposition (*Gesinnung*) or attitude of human will.<sup>59</sup> So let us follow Hegel's account of social estates as it hovers between the conscious and unconscious sides of human volition. By attending to

what estates are “for themselves,” we retain a foothold in objective mind with its political fragmentation; and by having regard to what they are “in themselves,” we watch a context unfold wherein fragmentation can be overcome.<sup>60</sup>

#### 4.2 *The People's Estates*

The first estate Hegel considers is one wherein a common will is realized in the natural feelings of an individual who is unassertive of its independent end-status as a person. This is the agricultural estate, the dominant sentiment of whose members is unquestioning trust in laws and authorities hallowed by their antiquity. Claiming no right of independent will or insight, the peasant simply “pays taxes and tributes because that is the way things are: these fields and cottages have been situated so from all time; it is thus and that is all.”<sup>61</sup> He is thus satisfied within the order given by nature and time. His work, therefore, is not the specialized sort performed by a personality detached from need; it is rather “concrete labor” intended to satisfy the totality of his needs. Such work brings nothing new into existence; it merely gathers in what is already there. Thus the peasant “plows, sows, but it is God who bestows prosperity, the seasons... which produce of themselves that which he put in the ground.”<sup>62</sup>

Spirit's transition from an unthinking trust in what is given to the irruption of individual personality produces the *bourgeois* estate (*Bürgerstand*), subdivided into artisans, merchants, and large-scale manufacturers.<sup>63</sup> In this estate concrete labor to satisfy all natural needs becomes the abstract labor of an independence-seeking person, while unreflective trust in the natural and customary gives way to a drive to master nature through the acquisition of market-confirmed property. Of the disposition of the artisan Hegel writes:

He knows himself definitely as a proprietor, and not only by virtue of possession, but because it is his right...; he knows himself as recognized in his particularity, the imprint of which he stamps everywhere. He enjoys his glass of beer and wine not as the peasant in his coarseness does, in order to raise himself to a general stupor...but as a means of proving to himself, as he would with a suit or with the finery of his wife and children, that he is as good as the other man and that he has come a long way.<sup>64</sup>

However, the high opinion the artisan has of himself, based as it is on the refinement of his consumer goods and so on his distinction from the peasant, lies exposed to changing opinion as to what is refined and what is coarse. This dependence is overcome by the merchant and the manufacturing capitalist, whose self-esteem rests solely on possessing money. As the measure of value for all commodities, money abstracts from the specific properties of objects, from the concrete needs these objects satisfy, as well as from the particular skills employed in producing them. At the same time, however, money endows its possessor with the power to control this realm of particulars, a power realized in exchange.<sup>65</sup>

Now, in the exchange of commodities between artisans, the common will embodied in exchange value and freed from immediate contingencies (as barter

is not) by money remains subordinate to the individual person, the property of which it confirms. For the artisan, therefore, money is never more than a means to an end, a medium of exchange and hence of recognized ownership. By contrast, the merchant and capitalist are proto-Kantians who grasp the common will embodied in exchange value as the ground of a truer independence, emancipate exchange from its last connection with material want, and pursue money for its own sake. In valuing only what all agents must value regardless of what they subjectively value, merchants and capitalists enjoy a self-esteem largely independent of changing standards of refinement.<sup>66</sup>

Nevertheless, in reposing his dignity on the accumulation of wealth, the merchant/capitalist lays himself open to insecurity from a different quarter. Money is an external thing. As such, it can be acquired in larger or smaller quantities, the size of one's possession being dependent on accidents of birth, talent, physical health, and the like. So, the money-seeker has traded dependence on opinion for dependence on fortune. Furthermore, because the common will embodied in exchange value resulted from the person's alienating control over his livelihood to the division of labor, the market, and now the labor market, it now lies external and indifferent to those who accumulate little. More particularly, the common will is indifferent to "the misery of a class (*Klasse*)" upon which, says Hegel, "factories and manufactures base their existence."<sup>67</sup> Accordingly, to equate, as the capitalist now does, the common will of market agents (i.e. respect for exchange-mediated property in value) with right as such is to abandon the welfare of those with only their labor to sell to the self-interested will of employers, to the labor market, and to discretionary charity. Concerning the type of virtue that adheres uncompromisingly to this market justice (or abstract right, as he calls it later), Hegel has this to say:

The disposition of the merchant is this harshness of spirit, wherein the particular, entirely alienated, ceases to count, [only] strict right. Exchange must be honored, destroy what it will, family, welfare, life etc. complete mercilessness.<sup>68</sup>

The indifference of right to individual welfare is superseded in the universal estate (*Stand der Allgemeinheit*), a political estate composed of professional civil servants. The latter have renounced an ego-centered pursuit of dignity through wealth accumulation in favor of a personal honor mediated through service to the common good.<sup>69</sup> Among merchants and capitalists, the common will had already begun to assert itself against the individual, but only as value – that is, only as an externalization of the particular will and hence also as an object estranged from (beyond the control of) human agency. In the public service, by contrast, the common will of the market is grasped as the general will of humanity, whose elevation to sovereignty (as we saw) expands right to include not only prohibitions against interference with person and property but also a positive entitlement to the basic conditions of independence. Here, therefore, the general will has acquired a purpose and content larger than that of market justice – one that the public servant now implements by overseeing

and regulating the “lower” estates.<sup>70</sup> The limits to this endeavor we have already seen. The civil servant’s striving to realize the common good of independence remains just that – an endless striving; for this good is one-sidedly asserted against an indifferent selfish will presumed to be natural and fixed.

#### 4.3 *The Supersession of the Bourgeoisie*

On the other hand, a purpose to ensure the individual’s welfare eventually germinates within the private sector itself. It does so, according to Hegel, in the businessman (*Geschäftsmann*). By this human type Hegel does not mean an estate alongside the *bourgeois* estate with its sub-categories of artisan, merchant, and capitalist. He means an estate in which the *bourgeoisie* is superseded. The essential difference between the *bourgeoisie* and its successor is one of disposition. Whereas the *bourgeois* thought of nothing besides his rights as a person and his status as a man of refined consumption and riches, the businessman – as Hegel conceives him – acts mainly from a sense of duty toward the welfare of those with whom he associates for the purpose of producing some good or service.<sup>71</sup> Thus, the majority of artisans, merchants, and manufacturers no longer act as lone entrepreneurs whose insecurity breeds endless acquisition; rather they now work within a body of co-professionals whose aim is mutually to secure their common welfare. The importance of these associations for Hegel’s political philosophy cannot be exaggerated, and I’ll discuss them at some length in a later context. Suffice it here to mention the following points.

First, the basis of the businessman’s disposition is a post-Kantian social morality that Hegel saw articulated in the writings of his contemporary, Friedrich Jacobi. According to this morality, exercising virtue does not require willing disinterestedly the law that all free agents would *a priori* give themselves. Rather one also acts virtuously in determining from intuition and cultivated sentiment what the common freedom requires in particular situations and within particular civil associations; and one feels no stain in deriving enjoyment from using discretion and situation-sense to specify the general will and put it into action. Inasmuch as the good’s practical realization demands the free exercise of moral judgment, the particular will now finds its justification and proper scope as the medium for specifying the good and actualizing it.<sup>72</sup>

Growing up within the private sector of civil society, this ethic of conscience (as Hegel will later call it) transforms it. In the business estate as Hegel understands it, the exploitation of a class of poor workers by a class of rich capitalists ends. Indeed, classes as such disappear as both sides of the antagonism between capital and labor merge into a single estate made up of democratic cooperatives that aim at the welfare of their members.<sup>73</sup> What the historical basis is for Hegel’s business estate – whether this idea is descriptive or prescriptive – are questions I’ll take up in Chapter 5. But the idea that a just society is a classless society appeared in Hegel’s work before it appeared in Marx’s. Only there, it is combined with a view of society, not as an undifferentiated mass, but as a



plurality of ethical groupings based on diverse mind-sets rooted in archetypal phases of human development.

What must be emphasized now, however, is that not even the growth of a social estate in which capitalists and laborers merge suffices to overcome civil society's opposition between state and market. Because Hegel's businessman funnels the good through his particular intuitions, inclinations, and experience, his sense of duty does not extend beyond the boundaries of his profession. Consequently, the common welfare remains the exclusive concern of public servants who impose on the business estate from above their opinions about what regulations are needed. But as long as this unilateralism persists, neither the interest of government nor that of business is fully satisfied: not that of government because unilateralism contradicts its claim of impartiality; not that of business because the welfare of each association is exposed to the particularism of others and to the authoritarian decree of government.

The terms of a reconciliation between the two sides are easier to envision than the means of satisfying them. To resolve the conflict between state and society, both the businessman and the public servant must do what seems inconceivable. The businessman must devote himself with all the virtue of the public servant to the common good without thereby surrendering his autonomous self-existence as the servant of a special interest. For his part, the public servant must defer to the self-regulation of the business estate without abdicating responsibility for the common good.

#### *4.4 The Non-War Mediator*

Now, we saw earlier that a reconciliation of the extreme antithesis between the universal and the particular will (where both claim to be final ends) is achieved in war. By furnishing an extraordinary context wherein the ends of the State are served by individual license (the laws of war having no impartial enforcement arm), war allows each extreme to submit to the other's authority/liberty without self-loss. Because in war the State uses individual license, the soldier can unite extreme self-effacement for the universal with extreme liberty for himself. And because the soldier acknowledges a duty to the State as to the source of his permission, the public authority can defer to his license while remaining an authority. Thus if the framework of objective mind (wherein the natural ego is an end and the state is both servant and enemy of its liberty) were fixed, and if the conflict between public and private spheres were thus a constant, then Spirit's realization as a political life could occur only as a paroxysm of life. Its quotidian existence would be possible only within the confines of a particular estate – the professional military.<sup>74</sup>

However, we can perhaps now see that war is not the only possible mediator. The reconciling middle for the extremes of public authority and individual license that war provides is alternatively provided by Spirit's self-vindication as the ground of valid worth claims in and through the claimed supremacy of the particular will. For the public servant and businessman, who walk on their feet,

the natural ego is fixed and first, and so the opposition between the universal and the particular will is intractable. However, for the philosopher who walks on his head, the universal will of a people organized as a *polis* is logically first. The claim to end-status of the separate ego falls *from* the *polis* as that whose free acknowledgment of its source is necessary to the universal will's confirmed natural authority. From this inverted point of view, the extreme opposition between the universal will's authority and the particular will's independence is not intractable. Though still extreme, the opposition now falls within a bi-personal whole (Spirit) that is latent or unknown to the extremes. And because the opposition falls within a latent whole, it is, at least in a primordial sense, potentially reconciled in an explicit Whole.

The bi-personal Whole is the mediator between the extremes of the universal and the particular alternative to war. In it, too, individual license is "forgiven" as that whose free production of examples of mutual recognition independently confirms Spirit as the ground of valid worth claims. Through this middle term, the natural individual can submit to the universal will without self-loss, for he receives back as confirmations of Spirit everything (private property, free market exchange, enforceable contracts) that embodies his separate end-status. Likewise, the universal will can defer to the separate end-status of the individual ego, for, like the soldier in wartime, this ego now receives its right to liberty from the Whole to which it acknowledges a reciprocal duty.<sup>75</sup>

Now, further, in the conflict between the public service and the business estate, Spirit has arrived at an internal opposition that is potentially reconciled not only in a primordial sense but also in a *de facto* or historical sense. This is so because both sides of the opposition are now ethical wholes in which the other is latently present, so that in their opposition, they are self-contradictory not only for the upside-down philosopher but also for themselves.<sup>76</sup> They know themselves to be inadequate to the natures they claim to be. Thus, the business estate is composed of self-avowed ethical cooperatives that aim at the common welfare of their members; but they are not ethical cooperatives if they pursue a special corporate interest at the expense of the common welfare as such. For its part, the civil service claims to promote the common welfare of all those in the private sector. But it does not promote the common welfare if it asserts a corporate opinion about what the common welfare requires against those whose welfare it claims to promote and who have a different opinion. Accordingly, each side now knows that it must submit to the other in order to fulfill its inherent nature. What they do not know is how to do this without self-sacrifice.

We come, then, to this question: How is it to be known that the separate ego's claim to end-status falls *from* a *polis* lacking confirmation of its authority from an independent other; that the opposition of the universal and the particular in modern civil society is thus an opposition internal to a bi-personal Whole; that these extremes are therefore not mutually external and indifferent but require and so seek each other for completion; that the examples of mutual recognition

produced in this way are the means by which the bi-personal Whole itself gains confirmation as the law of reality out of the mouth of the individual who claims self-sufficiency; that therefore both the universal and the particular poles of civil society can accept each other without self-loss through the mediation of the Whole that preserves both? In brief, how is it to be known that the true sovereign is neither the particular will of an individual nor the general will of a mass nor the universal will of a people, but Spirit?

Among Christians, says Hegel, it is already known, or rather believed. The inner thought of Christianity, he writes,

is this speculative idea that the self, the real, is thought, [that] essence and being are one. This [is] put thus, that God, the otherworldly absolute Essence became a man, this reality, but that similarly this reality cancelled itself, passed away and this God ... is only [as] the [restored] immediacy of the spirit of a community. That God is Spirit, this is the content of this religion and the object of its consciousness.<sup>77</sup>

However, while Christians worship God as Spirit, they do not know Spirit's persons as the universal self of a people and the self of a separate individual; hence they do not know political life to be potentially a perfect embodiment of Spirit. The cultic self-renunciation of the believer, his submission to the Father through the Father-Son unity, is an alienation of self to an external Reality detached from him, the reward of dignity having consequently to be postponed to an afterlife.<sup>78</sup> And while the individual's commitment creates a spiritual community in the church, it leaves the state untransformed, winning for Spirit a limited community – one united by hope for a heavenly Kingdom to come. Since the realization of this otherworldly Kingdom implies the destruction of worldly states, this is a mad hope for the end of the world Spirit was supposed to have redeemed.

But "the reality of the Kingdom of Heaven," writes Hegel, "is precisely the State."<sup>79</sup> Spirit, he writes, is

not an alien nature, not an otherworldly unity, not a reconciliation whose enjoyment and existence is beyond and in the future, but here: here ego knows the Absolute. It knows, it comprehends; it is nothing alien ... it is this Self. Ego is this indivisible bond between the particular and the universal ... The immediacy of Spirit is the Spirit of a people [insofar as the latter is] existent absolute Spirit.<sup>80</sup>

"Here ego knows the Absolute." That which grasps Spirit as a this-worldly bond between the self of a people and that of a separate person is Hegel's philosophy. That philosophy is Spirit's self-knowledge as the law of reality in the autonomous productions of individual personality and in the spontaneous return of the opposite poles of civil society to their ground. It is thus the public justification of a theism hitherto considered an object only for indemonstrable faith. Moreover, Spirit's self-knowledge is itself the middle term between the poles of objective mind, the Whole wherein they are united in their extreme alterity and through which each can thus submit to the other without self-loss.

But then Spirit's self-knowledge also mediates between church (an association united by a group conviction concerning humanity's last end) and state (an association united under a general will to the equal freedom to choose ends); for it is that through whose help a State materializes that is generally known and endorsed as humanity's last end – as the association sufficient for the full satisfaction in law of the human being's drive to independence and objective worth. In practical terms, this means the following.

With the self-knowledge of Spirit as mediator, the universal and business estates can recognize each other as ends without loss to the universality of the one or to the independence of the other. Both can exchange their feet-on-the-ground existence as opposite wills for their objective existence as mutually complementary persons of one Whole. The business estate can devote itself to the Whole as to that which guarantees its private rights and makes room for its independent realization of the common good. Reciprocally, the universal estate can share political authority with now public-spirited particular interests organized as ethical cooperatives. By this interchange, the nature of each side is realized: the universal will is confirmed as such through the participation in government of particular interests; while the individual's autonomy is perfected through the political representation not only of his pure will but also of his interests as a determinate individual.

Accordingly, the philosophic self-knowledge of Spirit "brings into being another world."<sup>81</sup> Neither a thinking that asserts unity against a fragmented state nor the contemplation of a state unified without it, philosophy is itself the indispensable means for the transcendence of objective mind in absolute Spirit – for the practical unification of political life. So Hegel writes: "Man will not be master over nature until he is master over himself. [Nature] is potentially (*an sich*) the becoming to Spirit. For this potentiality to be actual (*da sein*), Spirit must comprehend itself."<sup>82</sup>

## 5 The Dilemma of Theory and Practice

Our study of the second Jena *Philosophy of Spirit* has disclosed the second horn of a dilemma at whose existence we could earlier only hint. A political life that is whole without being "totalitarian" is impossible unless Hegel's science of Spirit acts as the reconciling middle for the opposing extremes of civil society. Between unaided human action and the justice-supporting Whole there is a chasm that (supernatural aids aside) only absolute idealism can bridge. Yet in the previous chapter we learned that the scientific vindication of Spirit *presupposes* a political life thus unified. The conditions of systematic knowledge would thus seem to impose on philosophy a twofold and contradictory requirement. On the one hand, Spirit's self-knowledge must transform a political order that exists in human time into one that completes divine-human history; on the other, this self-knowledge is possible – or so it seems – only as an afterthought to a political order already whole and complete.

This systemic problem appears otherwise as an apparent inconsistency in some of Hegel's more casual remarks about the role of philosophic contemplation. There is, of course, the famous passage in the preface to the *Philosophy of Right*, where Hegel stresses the passive, politically uncreative character of philosophic thought:

When philosophy paints its grey on grey, then has a shape of life grown old. By philosophy's grey in grey it cannot be rejuvenated but only understood. The owl of Minerva begins its flight only with the falling of dusk.<sup>83</sup>

However, the "owl" image of philosophy is apparently not the only ornithological one that Hegel used. K. L. Michelet, a co-editor of the first collection of Hegel's works, reports a conversation he had with Hegel in which the latter compared philosophy to the "cockcrow" that proclaims the coming of a new dawn.<sup>84</sup> It is certainly this conception of philosophy that Hegel has in mind as he writes to his friend Niethammer on October 28, 1808: "Theoretical work, as I am becoming more convinced every day, accomplishes more in the world than practical work; once the realm of notions is revolutionized, actuality does not hold out."<sup>85</sup> Again, the picture of philosophy as a catalyst for change is dominant throughout the *Phenomenology of Spirit*. For in contrast to the *Philosophy of Right*, which contemplates a world "grown old" and apparently unneedful of philosophy, the *Phenomenology* arrives at "a birth-time" in which philosophy is needed as midwife. We quote from the preface:

Spirit has broken with the existence and self-image of the world hitherto prevailing and is about to let them sink into the past and work on its transformation... But this new world is perfectly realized just as little as the new-born child; and it is essential to keep this in mind. It first enters in its immediacy or in its concept. As little as a building is finished when its foundation is laid is the attained concept of the whole the Whole itself... The reality of this simple whole, however, consists in this, that the previous configurations (*Gestaltungen*) which have become moments develop themselves... anew, but in their new context and with their new significance.<sup>86</sup>

One might be tempted to interpret such conflicting statements as evidence of a basic incongruity between the Hegel of Jena and the Hegel of Berlin. The former might be thought to retain much of the youthful vigor, intellectual independence, and revolutionary enthusiasm that characterize the writings of the Bern and Frankfurt periods, while the older Hegel might be portrayed as a somewhat compromised academic philosopher, an all-too-dutiful servant of the Prussian state. However, if explanations *ad hominem* are admissible only as a last resort, then this one must be discarded as superfluous. For granted the validity of our interpretation thus far, the inconsistency in Hegel's statements reflects a circularity problem inherent in the nature of systematic knowledge. The science of Spirit presupposes a perfect state, but a perfect state presupposes the science of Spirit.

The question we must now ask is whether and under what conditions philosophy can itself break through this circle. Specifically, can the self-knowledge

of Spirit assume a form alternative to the *Encyclopaedia of the Philosophical Sciences* – one that does not need an already unified political life as its existential precondition? Can philosophy, in other words, vindicate Spirit as the law of reality in a still fragmented world so as to be able to heal this fragmentation, thereby bridging the gulf from the state in time to the State in Reason, hence from the love of knowledge to knowledge itself?

It is probable that even while still at Frankfurt, Hegel had perceived the need for such a bridge. In a letter written to Schelling shortly before joining his friend in Jena, Hegel wrote: “In my scientific development that began with the subordinate needs of men, I was compelled to move toward science and to put the ideal of my youth in the form of reflection, of a system. I ask myself now, while I am still occupied with it, what sort of intervention in the life of man is available.”<sup>87</sup>

In the next two chapters, we read the *Phenomenology of Spirit* as philosophy’s intervention in the life of man.

## Notes

- 1 See K. Marx, *Economic and Philosophical Manuscripts of 1844*, p. 175 ff.; Herbert Marcuse, *Reason and Revolution*, pp. 91–92; Sidney Hook, *From Hegel to Marx*, p. 22 ff.; Emil Fackenheim, *The Religious Dimension in Hegel’s Thought*, p. 210 ff.; Shlomo Avineri, *Hegel’s Theory of the Modern State*, pp. 99, 107, 132; Raymond Plant, *Hegel, passim*; Charles Taylor, *Hegel*, pp. 437–8, 533; Michael Hardimon, *Hegel’s Social Philosophy: The Project of Reconciliation, passim*.
- 2 This was reprinted as *Jenaer Realphilosophie: Vorlesungsmanuskripte zur Philosophie der Natur und des Geistes von 1805–6*, ed. Johannes Hoffmeister (Hamburg: Meiner, 1967). Hegel’s first sketch of a *Philosophy of Right* was composed circa 1802 and published in 1913 under the title *System der Sittlichkeit*, ed. Georg Lasson (reprint, Meiner, 1967). The first draft of a *Philosophy of Spirit* was published as *Jenenser Realphilosophie I: die Vorlesungen von 1803–4*, ed. Johannes Hoffmeister (Leipzig, 1932). These drafts are now collected in the authoritative critical edition of Hegel’s works, *Gesammelte Werke*, ed. Rheinisch-Westfälischen Akademie der Wissenschaften (Hamburg: Meiner, 1968–). Page references to *SysSitt*, *Realphil I*, and *Realphil II* are to the relevant volumes (see Abbreviations) of the collected works. Though the designations *Realphilosophie I* and *Realphilosophie II* are not used in the collected works, I’ve kept them because of their familiarity.
- 3 What happened between 1806 and 1817 (the year the *Encyclopaedia* was published) that could have led Hegel to think that the time was suddenly ripe for philosophy’s reconciliation with the world? At the time Hegel composed his Jena lectures, France had recently exchanged a bloody reign of terror for the dictatorship of Napoleon; the English constitution was a heap of positive rights and privileges; and Germany was a political non-entity, a plurality of independent principalities ruled by feudal autocrats. By 1815, however, several German states – Prussia among them – had, under the impact of the Napoleonic conquests, begun to reform their civil law in accordance with the equality of persons as well as to create political institutions favorable to the rule of law and responsible government. In Prussia, the

abolition of serfdom, emancipation of Jews, and Stein-Hardenberg reforms of the Prussian bureaucracy in accordance with meritocracy and the rule of law (so limiting monarchical power) were particularly impressive. For the history of this reform movement see G. S. Ford, *Stein and the Era of Reform in Prussia, 1807–1815*; W. Simon, *The Failure of the Prussian Reform Movement, 1807–1819*. Much has been made of the supposed difference between the critical Hegel of the Jena manuscripts and the reconciled author of the *Philosophy of Right*. But Shlomo Avineri rightly points out that this difference reflects a change not so much in Hegel as in actual legal and political circumstances; see *Hegel's Theory of the Modern State*, p. 69. Hegel might have let wishful thinking interfere with his evaluation of these changes, but there was undoubtedly a factual basis for his shift from immanent criticism to reconciled understanding.

- 4 This development is traced in Franz Rosenzweig, *Hegel under der Staat*, I, 101–221. See also Karl Rosenkranz, *G. W. F. Hegels Leben*, pp. 193–8.
- 5 Rosenzweig agrees; see *Hegel und der Staat*, I, 183 ff.
- 6 *Realphil* II, p. 203; cf. PR, paras. 5–7.
- 7 *Realphil* II, p. 207.
- 8 *Realphil* II, pp. 208–11.
- 9 *Realphil* II, p. 212.
- 10 *Realphil* II, pp. 211–2.
- 11 *Realphil* II, pp. 212–3; cf. PR, para. 173.
- 12 *Realphil* II, pp. 213–4.
- 13 *Realphil* II, p. 216.
- 14 *Realphil* II, pp. 214–8.
- 15 *Realphil* II, pp. 218–9.
- 16 *Realphil* II, p. 219 ff.
- 17 *Realphil* II, pp. 223–5.
- 18 *Realphil* II, p. 225. Cf. *Realphil* I, p. 323 (SE, p. 247).
- 19 *Realphil* II, p. 223 ff.
- 20 *Realphil* II, p. 226.
- 21 SE, p. 121: “Property enters reality through the plurality of persons involved in exchange and mutually recognizing one another.”
- 22 The fact that, given poverty, the equal opportunity to bid is formal does not mean that the thing bought in an open market is not valid property. It means that the private property of abstract persons (who are neither rich nor poor) is not conclusive for justice in holdings. For Hegel, full justice in holdings unites the property of persons with the welfare of determinate individuals; see PR, paras. 129–30.
- 23 In PR, para. 72, Hegel puts it this way: “contract [is] the process in which there is revealed and mediated the contradiction that I am and remain the independent owner of something from which I exclude the will of another only insofar as in identifying my will with that of another I cease to be an owner.”
- 24 *Realphil* II, p. 226.
- 25 *Realphil* II, pp. 226–7.
- 26 *Realphil* II, p. 242 f.; cf. SysSitt, p. 350: “The system of needs is...conceived as a system of universal reciprocal physical interdependence. No one looks after the totality of his needs. His work or whatever means he has of satisfying his needs fails to assure him this satisfaction. Whether the surplus he possesses will bring him complete satisfaction depends on an alien power over which he has no control. The

worth of that surplus...is independent of him and fluctuating." See also *Realphil* I, pp. 322–4 (SE, pp. 247–9).

27 *Realphil* II, p. 228.

28 *Realphil* II, p. 228 f.; cf. PR, para. 79.

29 *Realphil* II, p. 231; cf. PR, para. 81: "But this particularity of the will, taken by itself, is arbitrariness and contingency, and in contract I have surrendered these only as arbitrariness in the case of a single thing and not as the arbitrariness and contingency of the will itself."

30 *Realphil* II, p. 235.

31 *Realphil* II, p. 233.

32 *Realphil* II, p. 235 f.; cf. PR, paras. 81, 97, 99.

33 *Realphil* II, p. 236 ff.

34 *Realphil* II, p. 242.

35 *Realphil* II, p. 244.

36 *Realphil* II, p. 245.

37 *Realphil* II, p. 244.

38 *Realphil* II, p. 245.

39 *Realphil* II, pp. 248–9.

40 *Realphil* II, p. 250 ff. (Hegel's marginal notes); cf. *Enz*, para. 532.

41 *Realphil* II, p. 253.

42 *Realphil* II, pp. 249–50.

43 PR, para. 279, 349; *Enz*, para. 394.

44 See Shlomo Avineri, "Hegel and Nationalism," in W. Kaufmann, ed., *Hegel's Political Philosophy*, pp. 109–36.

45 *Realphil* II, p. 249.

46 I have elsewhere criticized Rousseau's attempt to evade this implication; see *Constitutional Goods*, pp. 397–8.

47 If there is a "secret of Hegel," it is that the atomistic ego is itself embedded in the State's unity. This makes all totalitarian and communitarian readings of Hegel's mature political thought distortions of his thought.

48 *Realphil* II, p. 254.

49 *Realphil* II, p. 256.

50 Popper ascribes to Hegel Heraclitus' view that war is "the father and king of all things"; *The Open Society and its Enemies*, II, 37.

51 *Realphil* II, p. 274 ff. Cf. PR, paras. 323–4.

52 *Realphil* II, p. 275. The statement that war is the only means by which civil society (given its individualist assumptions) can achieve unity must be refined somewhat to do justice to the subtlety of Hegel's argument. Hegel sees this unity as being achieved in the normal course of things reflexively or negatively, i.e. through a state's distinguishing itself from other states and demanding respect for its internal sovereignty (see *Realphil* II, pp. 274–5; *Enz*, para. 545; PR, paras. 322, 331). As yet, however, this is only a subjective and formal certainty of internal sovereignty, one that might be contradicted by internal dissolution as well as by the disrespect of other states. War, then, is giving reality to the subjective certainty of internal sovereignty – the state's manifesting itself as one.

53 *Realphil* II, pp. 281–2; cf. PR, paras. 323, 340.

54 *Realphil* II, p. 274 ff.; cf. PR, para. 330.

55 *Realphil* II, p. 275; cf. PR, para. 333.



- 56 Hegel, *Vorlesungen über die Philosophie der Weltgeschichte*, ed. G. Lasson (Leipzig, 1920), p. 761; cited in Avineri, *Hegel's Theory of the Modern State*, p. 207. Hardimon saddles Hegel with the view that war is "a permanent feature of human existence." *Hegel's Social Philosophy*, p. 231. But Hegel does not say this. He says that war is the manifestation of the ideality of the Whole and of the nothingness of that which asserts a fixed existence outside the Whole; PR, para. 323. But only in civil society does the individual assert a fixed existence outside the Whole. It would therefore be more accurate to say that Hegel regards war as a permanent feature of civil society, which he does not regard as the ultimate form of political life.
- 57 *Realphil* II, p. 253 ff.
- 58 *Realphil* II, pp. 244, 270. This distinction is retained in the PR; see paras. 202, 243.
- 59 *Realphil* II, p. 265.
- 60 Since Spirit's objective confirmation as humanity's final end requires its "sacrifice" to the independent standpoint and movement of individual self-consciousness, the philosopher must understand the setting up and downfall of rival conceptions of humanity's end in their own terms, without appealing to Spirit. So keeping Spirit out of the explanation is necessitated by Spirit's own self-realization. Yet Robert Pippin takes Hegel's "in its own terms" account of objective mind as proof that Spirit is inessential to understanding what Hegel is doing. See *Hegel's Practical Philosophy*, pp. 9–11.
- 61 *Realphil* II, p. 267.
- 62 *Realphil* II, p. 267. In PR Hegel broadens the agricultural estate to include, in addition to the peasantry, the landed aristocracy; see paras. 305–7.
- 63 *Realphil* II, p. 268.
- 64 *Realphil* II, pp. 268–9.
- 65 *Realphil* II, p. 269.
- 66 *Realphil* II, p. 269.
- 67 *Realphil* II, p. 270.
- 68 *Realphil* II, p. 270.
- 69 *Realphil* II, p. 270 f.
- 70 *Realphil* II, p. 271 f.
- 71 *Realphil* II, pp. 273–4. In the *Realphil* II, systematic considerations still vie with historical ones in determining the method of Hegel's exposition. Hence he uses three different terms to designate the groups of artisans, merchants, and manufacturers: *Bürgerstand*, the disposition of which is acquisitiveness, *Geschäftsmann*, in whom the ruling disposition is dutifulness toward one's association; and *Stand des Gewerbes*, a neutral term that could refer to either of the other two and meaning vocational or professional estate. In the 1821 PR, by contrast, systematic considerations predominate. Accordingly, Hegel there blurs the historical distinction between the *bourgeoisie* and the businessman, using only the neutral term; see para. 204. This is an example of the untidiness of the *Realphil* II as compared with the PR, a quality upon which our discussion relies.
- 72 *Realphil* II, p. 273: "[The businessman] sees in his specific activity the Absolute . . ."; cf. SysSitt, p. 354: "To say that this estate is constituted inwardly means that within its limits it is a living universal; what its universal, its law and right is, is at the same time existent in individuals, real in them, through their will and self-activity." See also PR, paras. 207, 254.

- 73 Cf. SysSitt, pp. 354–5: “Every individual...effectuates this estate’s organic existence, one with another; but the estate cannot be in absolute unity. Therefore, it also makes them partly dependent, but ethically, in trust, respect...and this ethical life cancels the brutish (*Elementarische*), the pure mass, quantity, [and] posits a living relationship; and the rich man is immediately compelled [to ease] the master relationship and even the suspicion of the latter by allowing general participation in ruling[;] and external inequality likewise diminishes...as the infinite does not throw itself upon the determinate but exists as a living activity and therefore the desire for infinite wealth is itself extirpated.” Cf. PR, para. 253. The implications of Hegel’s corporation for class conflict have been generally missed, to which oversight we owe the persistence of the myth concerning Hegel’s social quietism.
- 74 *Realphil* II, p. 274; cf. PR, para. 325.
- 75 Thom Brooks writes (*Hegel’s Political Philosophy*, p. 123): “Perhaps the functions Hegel ascribes to war can be fulfilled by some alternative. However, for Hegel, this is simply not the case and it is hard to imagine what might take war’s place.” For Hegel, Spirit’s self-knowledge can take war’s place.
- 76 PR, para. 256.
- 77 *Realphil* II, p. 282.
- 78 *Realphil* II, p. 284.
- 79 *Realphil* II, p. 284.
- 80 *Realphil* II, p. 286.
- 81 *Realphil* II, p. 277.
- 82 *Realphil* II, p. 287 (Hegel’s marginal note).
- 83 PR, p. 16.
- 84 Quoted in Karl Löwith, *From Hegel to Nietzsche*, p. 62.
- 85 *Briefe*, I, 253.
- 86 *Phän*, pp. 10–11 (*Phen*, pp. 6–7).
- 87 *Briefe*, I, 59–60.

## PART II

### THE BRIDGE



## The Riddle of the *Phenomenology of Spirit*

[The *Phenomenology* is] in advance of science (*voraus der Wissenschaft*).

*Phän*, p. 552

### 1 Interpretive Puzzles

The *Phenomenology of Spirit*, Hegel's first published presentation of his philosophy, is the subject of a scholarly debate that has gone on for over a century.<sup>1</sup> At issue is the place of the *Phenomenology* in Hegel's system as a whole. Is the *Phenomenology* an independent and essential "first part" of systematic knowledge, coordinate with the later *Encyclopaedia*, or is it assimilated by the latter as by that which alone comprises the whole of systematic knowledge? Since, moreover, the *Phenomenology* evidently presents the entire self-knowledge of Spirit, the question may also be formulated so: does systematic knowledge require two separate presentations of Spirit's world sovereignty or only one?

The opening for the dispute is furnished by Hegel's own equivocations on the systemic function and significance of his first book. On its title page and again in its original preface, the *Phenomenology* is offered by Hegel as the first part of the *System of Science*.<sup>2</sup> Then, in a letter written to Schelling shortly after the book's publication, Hegel calls it the "first part, which is really the introduction."<sup>3</sup> This conception of the *Phenomenology* as an introductory first part of knowledge is reaffirmed five years later in the preface to the first edition of the *Science of Logic* (the sequel to the *Phenomenology*), wherein it is also stated that the projected second part contains, besides the Logic, "the two real sciences of philosophy, the Philosophy of Nature and the Philosophy of Spirit..."<sup>4</sup> The two parts together, says Hegel, complete the system of knowledge.

Given these statements, it is surprising to find that, concurrent with the writing of the *Science of Logic*, Hegel was teaching a course in philosophy at the

Nürnberg Gymnasium in which the “Phenomenology of Spirit” assumed quite a different significance. From an independent and essential first part of the system of knowledge, it had become, on the one hand, an external propaedeutic to an *Encyclopaedia*, and on the other, a subordinate piece of the latter.<sup>5</sup> A propaedeutic is an introduction to the system for the benefit of the student, not an introduction that the system itself requires. Moreover, it is this Nürnberg arrangement that seems ultimately to have prevailed. For when Hegel’s *Encyclopaedia of the Philosophical Sciences* finally appears in 1817, it does so not as the second part of systematic knowledge apparently promised by the original *Phenomenology*, but as a completely self-contained whole in which a truncated “Phenomenology” appears subsumed under a section of the *Philosophy of Spirit*. And when, shortly before his death, Hegel begins to prepare a second edition of the *Phenomenology*, he deletes the phrase in the preface characterizing the work as the first part of the system of knowledge.<sup>6</sup>

These facts might suggest that the *Phenomenology* of 1807 represents a superseded phase in Hegel’s intellectual journey toward his mature system.<sup>7</sup> Such a conclusion could perhaps claim further support from certain of Hegel’s utterances in which he criticizes the phenomenological form as an inferior medium for the presentation of his philosophy. For example, in the preface to the *Phenomenology*, Hegel writes that although Reason is the systematic interpenetration of logical essence and material existence, the truth of this statement “is not to be found in this exposition which is partly narrative (*erzählend*) in character.”<sup>8</sup> And in the book’s “introduction,” he states that the phenomenological presentation of knowledge “seems not to be free science, self-moving in the form unique to it, but may, from this point of view, be taken as the path of the natural consciousness which is pressing forward to true knowledge.”<sup>9</sup>

Nevertheless, any theory of the *Phenomenology* that makes it a mere passing phase in Hegel’s development toward his mature system must account for some puzzling facts. In the first place, the statements just quoted appear in the *Phenomenology* itself, not in the later system. Why would Hegel bother presenting knowledge in a form he knew would be superseded by a more suitable one? Secondly, Hegel wrote the *Phenomenology* knowing its form to be inadequate to knowledge even though he had already composed drafts of his later system for his Jena lectures. The fact that Hegel worked on a book he considered an inferior exposition of his philosophy when a superior version lay in his desk drawer would seem to rule out a genetic explanation of the original *Phenomenology*.

It could be argued, however, that the *Phenomenology* of 1807 was, after all, never more than a first part to a projected larger system, and that it was this whole initial scheme that was ultimately rejected by Hegel in favor of the plan of the *Encyclopaedia*. Not the *Phenomenology* by itself, then, but the overall plan to which it belongs is a milestone on the road to the mature system. However, this theory too encounters difficulties. The only difference

between the system outlined in the first preface to the *Science of Logic* and the plan of the *Encyclopaedia* is that the former does and the latter does not contain a Phenomenology of Spirit as a first part. If it were true, then, that the first plan represented an immature phase of the system, one would expect that Hegel would have repudiated his original conception of the *Phenomenology*. This, however, he did not do. On the contrary, he implied in his introductory remarks to the encyclopaedic *Logic* that the conception of 1807 was also justified.<sup>10</sup>

Enough has been said to indicate that the factual material supports inconsistent inferences. On the one hand, it renders irresistible the conclusion that Hegel intended the *Encyclopaedia* as a self-sufficient system of knowledge having no need of a phenomenological introduction; on the other hand, it repels the attempt to explain genetically Hegel's original conception of the *Phenomenology* as an introductory first part of his system. We cannot simply say that Hegel changed his mind or repudiated his original position. Clearly, then, an adequate theory of the *Phenomenology's* significance must somehow reconcile the two positions. It must show how the *Phenomenology* can be *at one time* an essential introduction to (and hence a first part of) systematic knowledge and *at another time* a non-essential propaedeutic to this system.

Closely related to the problem of the *Phenomenology's* place in Hegel's system is one concerning the book's internal organization. Early critics of the *Phenomenology* expressed bewilderment at the lack of correspondence between the plan of the work announced in its "Introduction" and the finished product.<sup>11</sup> The "Introduction" promises a "Science of the Experience of Consciousness" in which is traced the path taken by the consciousness of an external reality as it moves from sense-consciousness to perception to understanding to the certainty that reality is mediated by self-consciousness. However, the *Phenomenology* does not conclude when the active self behind the passive consciousness is revealed. Instead, it goes on to traverse the stages by which an isolated self who regards itself as a self-sufficient end is educated by dialectical hard knocks to the solid ground of its dignity in a political community evincing the dialogical structure of Spirit. And then, as if attached by his coattails to a runaway train, Hegel is carried even further. He goes on to reinterpret the entire preceding *Bildungsroman* from the standpoint of Spirit's self-realization in world-history. Thus, from a science of the experience of consciousness, the *Phenomenology* becomes the complete self-knowledge of Spirit as the fundamental reality. To at least two commentators, this unexpected turn raised serious doubts about the internal unity of the work. I. H. Fichte charged that Hegel had mixed together an epistemological and world-historical proof of Spirit, achieving neither completely.<sup>12</sup> Even less charitable was the judgment of Rudolf Haym, who, in a much quoted phrase, dismissed the *Phenomenology* as "psychology brought to confusion and disorder by history, and history brought to derangement by psychology."<sup>13</sup>

## 2 The *Phenomenology* as Mistake

It was not only Hegel's critics who expressed misgivings about the *Phenomenology*. Karl Rosenkranz, Hegel's first biographer and a staunch "Old Hegelian," had to admit that the science of the experience of consciousness contained much material that was historically contingent, a flaw he attributed to the immature state of Hegel's system.<sup>14</sup> Rosenkranz's standard was the much abbreviated version of the *Phenomenology* belonging to the *Encyclopaedia of the Philosophical Sciences*. That version gives "Phenomenology of Mind" a modest place within Subjective Mind, beginning at the point where the soul sunk in nature first distinguishes itself from an object, then moving from passive consciousness of an object to self-consciousness, then from the self's certainty of end-status to the inadequate confirmation of this certainty by a servile self, and then to the mutual recognition of equal selves in Reason, where the phenomenology section ends. The movement is concise, logical, and ahistorical. For Rosenkranz, the *Phenomenology* of 1807 could be judged by the standard of the encyclopaedic phenomenology because of the relation in which it stood to the later system. It was, he thought, nothing but a piece of the *Encyclopaedia* extracted from its proper systematic context and employed for pedagogical purposes as an external propaedeutic.<sup>15</sup> This conception of the pre-encyclopaedic *Phenomenology* as a pedagogical aid needed by the individual for his ascent to Hegel's standpoint but not by systematic science itself was typical of the so-called Old Hegelians.<sup>16</sup>

The suspicion that the *Phenomenology* of 1807 fails to constitute a unified whole has deepened as a result of studies carried out in the last hundred years or so.<sup>17</sup> Philological research has uncovered facts about the text that, on the surface at least, tend to support the conclusions of Fichte and Haym. We now know, for example, that the original title of the *Phenomenology* was none other than *Science of the Experience of Consciousness* and that Hegel did not change the title until he was well into the manuscript.<sup>18</sup> Another late change concerns the division of the whole into parts. The plan that appears in the table of contents is not the one followed in the text. The textual organization, which is thought to be the original one, divides the work neatly into eight chapters thus: I. Sense-certainty, This and Intending; II. Perception, Thing and Deceptiveness; III. Force and Understanding, Appearance and Supersensible World; IV. The Truth of Self-certainty; V. Certainty and Truth of Reason; VI. Spirit; VII. Religion; and VIII. Absolute Knowledge. However, the table of contents presents a far more complicated organization. While retaining the original scheme, it subsumes the first three chapters under a heading marked (A.) and titled Consciousness, after which follows (B.) Self-Consciousness, (C.) (AA.) Reason, (BB.) Spirit, (CC.) Religion, and (DD.) Absolute Knowledge, the last five headings corresponding to chapters IV, V, VI, VII, and VIII, respectively. The simple linearity of the first division hides, while the break in linearity (at C) of the second reveals, a shift in standpoint from natural consciousness to



Spirit's seeing itself reflected in world-historical interactions between collective and particular wills. And the reduced weight accorded each of the first three chapters by the second organization clearly subordinates a science of the experience of consciousness to a more comprehensive phenomenology of Spirit. What all this suggests is that Hegel changed the title of his book in order to accommodate a fundamental change in his conception of it, one that occurred sufficiently late in the course of composition to rule out his bringing the earlier portions (for example, the "introduction") into conformity with the new plan.<sup>19</sup>

But why did Hegel change his conception of the book? The fact of the change is insufficient by itself to prove a lack of unity in the *Phenomenology*. For if it were the case that this change was demanded by the nature of the work's original purpose, then, whatever the faults in its composition, the *Phenomenology* would stand up as a coherent whole.

One explanation of the change was offered in the 1930s by Theodor Haering, who thought he had solved with one stroke both the mystery of the book's organization and that of its relation to the later system. Simply stated, Haering's influential thesis was that the *Phenomenology* in its final form was the product of a sudden and arbitrary decision having nothing to do with what science required.<sup>20</sup> The documentary evidence for this conclusion consists mainly of Hegel's course advertisements from the Jena period, in which he states whether his forthcoming lectures will be *ex suo libro* or *ex dictatis*. The advertisement written during the winter of 1806 for the following summer reveals that at the time Hegel signed a contract with the eventual publisher of the *Phenomenology*, the book he projected was a Logic, perhaps accompanied by an introduction. Not until the late summer of 1806, approximately six months after Hegel had begun writing his book, does he mention anything about a Phenomenology of Spirit, and then still as appearing with a Logic in one volume.<sup>21</sup> With the aid of clues provided by Hegel's correspondence, Haering conjectures that by this time Hegel had already completed and sent to the publisher that part of the present-day *Phenomenology* which traces the epistemological pathway (through sense-consciousness, perception, and understanding) from conscious to self-consciousness and that suffices for a propaedeutic to the Logic.

But now a curious thing happens. Instead of making the transition to the Logic, Hegel proceeds to expand the introduction, working in material drawn from the earlier drafts of the Philosophy of Spirit.<sup>22</sup> Haering's explanation for this decision is as vulgar as it is arbitrary. He asserts that Hegel had initially resolved, under severe "internal and external pressure" (by which Haering meant psychological and financial pressure), to publish at least part of the system of philosophy he had been promising without result for five years. Because the system was not yet ready for publication, and because Schelling had meanwhile attracted a wide following through the publication of his own philosophy, Hegel decided at the last moment to include in his introduction as much

material from the whole as was possible to adapt. The result, argues Haering, was a work so vast in scope that it had to be published as an independent volume. Since, however, Hegel had already criticized certain of his contemporaries for beginning their philosophic systems with external introductions, the independent status of the *Phenomenology* must, so the theory goes, have been an embarrassment to him. Only as an expedient to avoid inconsistency, therefore, did Hegel originally call his introduction the “first part” of the system of science.<sup>23</sup>

As mentioned, the main thrust of Haering’s thesis is to attribute to external and personal reasons both the ultimate scope of the *Phenomenology* and its publication as the first part of Hegel’s system. That nothing more significant lies behind these facts is supposed to be proved by documents telling us something about the historical genesis of the book – about the way it was conceived and written. The most that can be legitimately concluded from such evidence, however, is that in the course of writing the introduction to the *Logic*, Hegel changed his mind about the range of its content and the principle of its organization. And since it is *prima facie* as valid to surmise that Hegel’s decision was dictated by the requirements of his task as that it was forced upon him by psychological and financial pressures, we may suspect that the particular interpretation of the facts chosen by Haering reflects certain preconceptions about the role and significance of the *Phenomenology*.

In fact, Haering regards as inconceivable the idea of a necessary introduction to systematic knowledge. Because absolute knowledge must form a self-contained, self-justifying system, any introduction that leads natural consciousness into the system from outside can serve at most a pedagogical purpose external and unnecessary to the system. “Either the *Phenomenology* is an introduction,” declares Haering, “or it is a piece of the system itself.”<sup>24</sup> The possibility of an introductory first part having been ruled out on systematic grounds, the actual publication of the introduction as a first part must be ascribed to personal factors, just as those sections of the introduction that are unsuitable to a propaedeutic (for example, those concerned with world history and religion) must be explained by external causes.

Underlying Haering’s thesis, then, is the assumption inherited from the old Hegelians that the *Phenomenology* of 1807, like its Nürnberg successor, is a mere propaedeutic to Hegel’s system of knowledge, one helpful to the individual seeking entrance to the system but not essential to the system itself. This assumption results from taking as one’s standard the later *Encyclopaedia* and viewing the pre-encyclopaedic *Phenomenology* as but a phase in Hegel’s progress to it. As was already pointed out, however, a genetic theory of the original *Phenomenology* flies in the face of evidence indicating that Hegel knew what he was doing when he made the introduction to his system the first part thereof and carried it beyond a science of natural consciousness.<sup>25</sup> The evidence is Hegel’s own assurance in the *Encyclopaedia* that these decisions were not at all arbitrary ones but were dictated by the logic of his purpose:

In my *Phenomenology of Spirit*, which on that account was at its publication designated as the first part of the System of Science, the course taken was to begin from the first, simplest appearance of Spirit, from immediate consciousness and to develop the dialectic of the latter up to the standpoint of philosophical science, *the necessity of which is proved by this process*. But for this it was impossible to remain with the formalism of mere consciousness; for the standpoint of philosophical knowledge is at once the richest (*gehaltvollste*) and most concrete; accordingly, coming before us in the form of a result, it presupposed also the concrete configurations (*Gestalten*) of consciousness, e. g. morality, ethical life, art, religion. Thus the development of the content ... of the parts proper to philosophical science falls in with what at first seemed to be a development of consciousness restricted to the formal; the former development must go on, so to speak, behind the back of consciousness, insofar as the content relates itself to consciousness as the inherent reality (*Ansich*).<sup>26</sup>

This statement, which looks back approvingly on the *Phenomenology* from the final system, makes it clear that the *Phenomenology's* task was not simply to lead natural consciousness to the true ground of knowledge but also and simultaneously to vindicate Spirit as that ground. Lest it be suspected that the latter purpose itself constituted an expansion of the original one, we draw attention to the passage in the introduction to the *Phenomenology* (really, to the "Science of the Experience of Consciousness"), in which Hegel tells us that this work has for its aim the justification of the scientific standpoint against that of natural consciousness, without which justification it would remain a "naked assurance" worth no more than those of other knowledge claims.<sup>27</sup> These passages leave no doubt that the *Phenomenology* was from the outset conceived as the self-knowledge of Spirit as the law of reality; never was it to have been a mere propaedeutic to this knowledge. But (as the passage quoted above also makes clear) the self-knowledge of Spirit is not yet complete with the downfall of anthropocentric standpoints and the appearance of the theocentric one. Rather its completion requires a further development in which the preceding one is comprehended anew from the standpoint of Spirit's project of self-realization, the salient phenomena for which are ethical wholes generated "behind the back" of natural consciousness. The self-realization of Spirit demands, in other words, that the Science of the Experience of Consciousness give way to, and be subsumed under, a Phenomenology of Spirit. If it is true, therefore, that Hegel changed his mind in midstream about the scope, organization, and title of the introductory first part of his system, it is no less true that he did so the better to fulfill its original purpose.

We are left, then, with the riddle intact. The publication of the phenomenological introduction as an essential first part of knowledge and as containing in a particular form the whole of knowledge cannot be attributed either to the immaturity of Hegel's system or to personal motives. In general, we may conclude that the *Phenomenology* of 1807 cannot be understood by taking the encyclopaedic phenomenology as the standard for how an education of natural consciousness must fit into systematic knowledge. Does this

mean that the *Phenomenology* can be understood better in isolation from the *Encyclopaedia*?

### 3 The *Phenomenology* as Alpha and Omega

Such, to be sure, was the approach taken in the twentieth century by commentators descended from the humanistic wing of early Hegel interpreters – from the so-called Young or Left Hegelians. Following Marx's judgment that the "outstanding achievement of Hegel's *Phenomenology* ... is ... that Hegel grasps the self-creation of man as a process ... as alienation and as transcendence of this alienation ... as the outcome of man's own labor,"<sup>28</sup> thinkers such as Georg Lukács, Ernst Bloch, and Alexandre Kojève sought the whole of Hegel's philosophy (or at least of what they thought was worthwhile in it) in the *Phenomenology* of 1807, virtually ignoring the question of that work's relation to the later system.<sup>29</sup> Moreover, they identified as the central theme of the *Phenomenology* the auto-genesis of a free humanity, its self-emancipation through history from a threefold bondage: to nature through labor's transformation thereof into a reflection of human agency; to the church through the evaporation of man's self-estranged essence in religion as he realizes it in the world; and to the state through the equal enjoyment of a common republican life ordered to the free self-activity of all.

Of these authors, only Lukács addressed the issue raised in the Hegel literature concerning the internal unity of the *Phenomenology*. For him, this unity presented no problem. The *Phenomenology*, he argued, may be roughly divided according to the scheme of the encyclopaedic *Philosophy of Spirit* into the phases of subjective mind, objective mind, and Absolute Spirit. Each of these divisions represents a logical phase in the appropriation by individual consciousness of the achievements of the species. At the level of subjective mind, the individual agent is alone and views the world in which he is placed as an alien *fatum*. His development up to the standpoint from which he sees his social environment as a collective human product recapitulates the development of the species from subjection to nature to the autonomous subordination of nature to human ends. From the new standpoint – that of objective mind – the individual self-consciously apprehends the given social world as a product of human historical activity, re-enacting in thought the process of world history as a process of human self-creation. This historical development culminates at the point where the philosopher can grasp it as a rationally sequenced process – as a movement evincing a dialectical logic whereby the idea of a new world is given by thinking through the reasons for the previous one's collapse. From this pinnacle – that of Absolute Spirit – the philosopher comprehends humanity's self-liberation as the fulfillment of its fantasy life in art and religion.<sup>30</sup>

Lukács's reading of the *Phenomenology* doubtless manages to construct it as a self-sufficient science. The problem, however, is that the particular unity discovered by Lukács emerges only when one interprets Hegel's book as though

it had been written by Marx. Hegel states explicitly that the path to be traced in the *Phenomenology* is not first and foremost a progress toward human freedom (though it is also that); it is rather a progress toward the transcendental domain or "Aether" of absolute knowledge.<sup>31</sup> And while this domain doubtless yields space to human self-activity as co-occupant, it nevertheless transcends human agency considered by itself. Precisely this progress, moreover, is to be the validation of *this domain* as the "element" (as in "being in one's element") of knowledge. "It is [the] becoming of science in general, or of knowledge," writes Hegel, "that is set forth here in the *Phenomenology of Spirit* . . ." <sup>32</sup> Or again: "What [Spirit] prepares for itself in [its phenomenology] is the element of knowledge."<sup>33</sup> The fact that the professed major theme of the *Phenomenology* is the self-development not of humanity (as sole protagonist) but of the transcendent domain of knowledge (in which humanity is partner) signifies to Marxist authors only that the work is ultimately a product of theistic mystification unclear as to its own real – that is, humanist – import. However, it stands to reason that by interpreting the sense of the *Phenomenology* polemically – against its author – these writers give up the attempt to interpret it faithfully.

Once it is accepted that the *Phenomenology's* aim is to vindicate Spirit as the domain of knowledge, it becomes possible to understand why Hegel considered this work an inferior form of his philosophy and hence at most an introduction to systematic science. According to Hegel, Spirit is best vindicated by means of the system of knowledge that Absolute Spirit itself is.<sup>34</sup> Properly understood, a system of knowledge is a Whole whose unifying idea is reflected in all its parts such that there is neither linear beginning (no beginning not warranted by the idea) nor linear end (no end not already present at the beginning). It is precisely as a circle that shuns dogmatic foundations, presuppositions, and axiomatic beginnings that Absolute Spirit is a system of *knowledge*. Accordingly, that presentation of the Whole is alone adequate to knowledge which is itself circular, or whose beginning in the order of demonstration is revealed at the end as necessitated through the realized Whole (Absolute Spirit), itself vindicated thereby as first in the order of nature. In the best presentation of knowledge, what is apparently first is last and what is apparently last is first.<sup>35</sup>

Now the *Phenomenology* differs from the *Encyclopaedia* in that its starting-point is not validated by the realized Whole (on the contrary, it is disconfirmed thereby) but is rather a prejudice-laden beginning *outside the Whole*.<sup>36</sup> The *Phenomenology* has a linear beginning and a linear end. Its beginning is a natural consciousness that assumes its prior and fixed reality and whose assumption philosophy provisionally accepts without judgment. Its end is a bi-personal Whole in which natural consciousness is cancelled *qua* natural or immediate. This distinction derives from a more fundamental one between the methods of demonstration employed by the two presentations. Whereas the *Encyclopaedia* moves from first to last within the actualized harmony of Notion and existence, the *Phenomenology* seeks to show their inherent or potential harmony to a consciousness that, by assuming the primacy of the atomistic ego, denies

it. It seeks, in other words, to persuade the natural consciousness to adopt the philosopher's upside-down perspective according to which the atomistic ego is derivative (falls) from a prior unity with which it is therefore inherently connected. Whereas, therefore, the *Encyclopaedia* moves entirely within the circle of Absolute Spirit, vindicating Spirit to itself in terms of a present and eternal order, the *Phenomenology* traces the logical path by which, through time, the natural ego enters this circle, vindicating Spirit to itself in terms of psychology and history.<sup>37</sup> While the former's method is thus wholly systematic, proceeding within the unity of logic and existence, the latter's method is "partly narrative," proceeding from everyday consciousness, using psychological types drawn from great literature, and depending on historical material contingent to this planet.

The foregoing contrast between Hegel's two presentations of his philosophy is sufficiently important for our purposes to warrant drawing it in a somewhat different way. So, the *Phenomenology* differs from the *Encyclopaedia* in taking as its starting-point natural consciousness and in provisionally accepting the latter's claim to priority *in order to be able to refute it*. Natural consciousness is, however, transcended in the realized Whole, along with the fixed dichotomies (between law and nature, universal and particular) its priority entails. To begin with it, therefore, is precisely to abstain from presupposing the Whole in its maximal significance and hence to begin unsystematically.<sup>38</sup> Thus, while the *Phenomenology* too is the self-knowledge of Spirit as the fundamental reality, its method of demonstration is not fully adequate to this knowledge ("seems not to be free science, self-moving in the form unique to it"), being meant (as we'll see) to prepare the ground for the demonstration that *is* adequate. This is why Hegel offers the *Phenomenology* not as definitive science but as that which may "help to bring philosophy nearer to the form of science – that goal where it can lay aside the name of love of knowledge and be actual knowledge."<sup>39</sup>

We may conclude, therefore, that the *Phenomenology of Spirit* is not, as the Young Hegelian, David Strauss maintained, the "alpha and omega" of Hegel's philosophy. Its significance cannot be understood apart from the *Encyclopaedia of the Philosophical Sciences* for which it is meant to prepare the way.

#### 4 The *Phenomenology* as Bridge

What, then, is the precise relation of the *Phenomenology* of 1807 to genuinely systematic knowledge? Two long passages in the *Phenomenology* bear on this question, and so I'll quote them in full. In the "introduction," first of all, Hegel explains the purpose of the first part of science as follows:

But science in the very fact that it makes an appearance (*auftritt*) is itself an appearance (*Erscheinung*); its advent is not yet itself carried out and elaborated in its truth. In this regard, it is a matter of indifference whether one considers that it [i.e. science] is the appearance because it enters alongside another kind of knowledge, or calls that other

untrue knowledge [the cause of] its being an appearance. Science, however, must liberate itself from this phenomenality, and it can only do so by turning against it. For science cannot simply reject a form of knowledge which is not true ... and then assure us that it is an entirely different kind of knowledge, for which the other knowledge is nothing at all. Through that assurance it would declare its force to lie in its being; but the untrue knowledge appeals likewise to the fact that it is, and gives assurance that to it science is nothing. One naked assurance, however, has just as much value as another ... For this reason we shall here undertake the exposition of phenomenal knowledge.<sup>40</sup>

At its first appearance in time, the bi-personal nexus called Spirit has not yet vindicated itself through science as the structure and law of reality. Precisely because it does appear in time, knowledge of this nexus appears alongside other conceptions of reality, the very existence of which relativizes Hegel's, subverting its claim to be knowledge of reality. So far it is just another opinion. In this situation, science cannot proceed at once to expound reality in terms of Spirit, dismissing other conceptions as untrue. That would be dogmatically to assert one viewpoint against another and so to leave knowledge in the condition of opinion into which its appearance in time places it. Instead, science must first liberate itself from its temporality, from its position as one kind of subjective conviction among others; and it must do so by exhibiting its truth through an immanent critique (one that shows their self-destruction when seriously pursued) of those very rival claims to knowledge of truth. Such a demonstration is an "exposition of phenomenal knowledge" – that is, a critique of pre-Hegelian claims to knowledge by which the latter are shown to refute themselves *qua* knowledge of truth (to be an "appearance" or semblance of knowledge) and to progress by a necessary sequence to the standpoint of genuine science.

Recall that the "introduction" from which the passage above is taken is to the "Science of the Experience of Consciousness," not to the larger *Phenomenology of Spirit*. We may conclude, therefore, that the "Science of the Experience of Consciousness" has for its task the vindication of idealism against the knowledge claims of realist standpoints (sense-consciousness, perception, understanding), this being the precondition for the systematic understanding of reality in terms of Hegel's own fundamental idea. The "Science of the Experience of Consciousness" is thus a necessary preparation for systematic knowledge and in that sense a self-terminating first part thereof.<sup>41</sup>

However, from the passage just quoted, it might appear that proving Hegel's idealist standpoint against rivals can be a task of theoretical criticism alone, that Hegel's knowledge-claim is sufficiently demonstrated by a philosophical monologue exposing the falsity of the "knowledge" claimed by natural consciousness, whose *practical* attitude to idealism is subsequently a matter of indifference. Indeed, a demonstration of this kind is the only one of which a "Science of the Experience of Consciousness" would be capable; for it presents the road to knowledge as nothing but a "highway of despair" for natural consciousness, giving the latter no reason internal to its own ends to adopt the upside down perspective from which its certainties appear as illusions – no consolation for

the despair that standpoint instils. And so when idealism declares the ineffable “this” to be vanishing, “this” individual can justly respond: “Vanishing in idealism, perhaps, but this only shows idealism’s inability to capture the particularity of ‘this’.”

That a more convincing demonstration of Hegel’s standpoint is required is revealed in the preface, which, as the part of the book composed last, is a preface to the entire *Phenomenology of Spirit*. There Hegel writes:

The pure recognition of Self in what is absolutely other than Self, this ether *as such* is the ground and basis of science or of universal knowledge ... Science on its side requires of individual self-consciousness that it raise itself to this ether in order to be able to live with it and in it. Conversely, the individual has the right to demand that science hand him the ladder at least to this standpoint, show him this standpoint as immanent in himself ... For the natural consciousness to entrust itself immediately to science, it would have to make the attempt, induced by who knows what, suddenly to walk on its head; the compulsion to adopt this unaccustomed posture and to move about in it is a force so unprepared for as to seem unnecessary ... Let science be inherently what it likes; in relation to immediate self-consciousness, it presents itself as an inversion of the latter, or because immediate self-consciousness has the principle of its reality in the certainty of itself, science bears the form of unreality, since in its own view self-consciousness is outside of science. Science has for that reason to unite this element with itself, or rather to show that and how this element belongs to itself. Devoid of such reality, science is merely the content as the *implicit* or *purpose*, which at first is still something inward, not as Spirit, but only as spiritual substance. That what is *implicit* must externalize itself and become *explicit* means nothing else than that it must establish self-consciousness as one with itself. This becoming of science in general, or of knowledge, is what this *Phenomenology of Spirit* ... presents.<sup>42</sup>

Here Hegel says that proof that Spirit’s bi-personal nexus is the ground of reality (hence of knowledge of reality) demands nothing less than the *practical* self-transcendence of natural consciousness – its voluntarily exchanging its immediate, feet-on-the-ground self for the individual self whose reality and worth are mediated by Spirit. What is meant here, moreover, is not the self-transcendence of this or that natural individual. “The task of leading the individual from his uneducated standpoint to knowledge,” writes Hegel, “had to be grasped in its general sense.”<sup>43</sup> It is the self-cancellation of *atomism* (the view that the natural ego has a fixed reality because it is morally self-sufficient) as a principle organizing life that constitutes proof of the standpoint for which Spirit’s bi-personal nexus is the ground of the individual’s substantial reality. And it is this practical proof which, as the only one independent of the philosopher’s assertion, is the precondition for the exposition of knowledge in genuinely systematic form.

Now with the expanded conception of a proof of the scientific standpoint goes an expansion in the systemic role of a “first part” of knowledge. The vindication of the scientific standpoint through the *aporias* suffered by natural consciousness is now said to be the “ladder” by which natural consciousness can



raise itself to that standpoint. In other words, the first part of science will itself make possible the self-transcendence of natural consciousness presupposed by systematic knowledge – the second part. It will do so, first, by awakening the need for such an act through a critique of the knowledge claimed by the natural consciousness. But, second, it will show how the natural ego inherently “belongs to” Spirit as one whose validation-seeking activity produces historical structures of mutual recognition – ethical wholes – that independently confirm Spirit’s bi-personal nexus as the ground of valid worth claims. By this showing, the first part teaches the individual ego that its self-transcendence *qua* natural and immediate is not its self-destruction *qua* separate and singular, but is, on the contrary, its preservation and fulfillment. This it can do, however, only as a phenomenology of Spirit; for the latter shows that the natural ego, far from being annulled in the universal Self of a political community, is essential to that Self’s independent confirmation as an end, so that only in relationship with the universal can “this” individual find the objective value it seeks. By this demonstration alone does philosophy hand the individual the ladder to the scientific standpoint.<sup>44</sup>

It will be evident that Hegel has ascribed to the *Phenomenology of Spirit* the role whose necessity was disclosed in the first two chapters of this book. The *Phenomenology* of 1807 is to be the self-vindication of Spirit as the law of reality in a world not yet exhibiting the unity of Spirit – a world still based on atomistic individualism and thus riven by the conflicts between law and nature, state and society, public and private. As such, it is to be the means by which the natural ego can renounce its claim of self-sufficiency without loss to its separate dignity, hence the means by which political life can be raised to its perfection in Spirit and philosophy to its perfection as the science of Spirit. Accordingly, the *Phenomenology* is offered as a bridge from time to the ideal state as well as to the science that comprehends the state as ideal. Put otherwise, it is meant as a bridge from the civil society of human temporality (past, present, future) to the State that completes divine-human history (simple unity-in-difference, inward bifurcation, return to unity-in-otherness) as well as to the systematic knowledge that presupposes the existence of that State.

Once the *Phenomenology* is understood in this role, the ambiguities surrounding its function can be both explained and reconciled. For if the purpose of the pre-encyclopaedic *Phenomenology* is to make possible the self-transcendence of natural consciousness, then it is indeed a necessary preliminary to, and so a first part of, a system that presupposes this transcendence. Moreover, such an introduction is necessarily the complete self-knowledge of Spirit (not just a “Science of the Experience of Consciousness”), for only as such is it the reconciling middle for the antitheses of universal and particular, public and private, in which natural consciousness is, by reason of its assumed priority, caught. Only as such, therefore, has it the power to raise individual selfhood to Spirit and civil society to the dialogical State. Once its bridging role is fulfilled, however, the *Phenomenology* of 1807 becomes, systematically

speaking, superfluous; the vindication of Spirit can now be exclusively in terms of the rational present, proceeding self-sufficiently within the unity of logic and existence. Into this unity an abbreviated *Phenomenology* now fits as a piece of subjective mind, beginning where an individual consciousness distinguishes itself from an object-world and ending where master and slave become equals in reason.

Accordingly, the question as to the place of the *Phenomenology* of 1807 in Hegel's system is essentially a practical question.<sup>45</sup> As a bridge from a temporal to an ideal order, the *Phenomenology* is indeed essential to systematic knowledge; yet it is destined to become superfluous once the bridge is crossed. The *Phenomenology's* necessity is a transient necessity in that the *Phenomenology* is philosophy's intervention in time with a view to raising the state in time to the State in Reason. While, however, a phenomenological introduction to science becomes superfluous from an objective point of view, it remains subjectively helpful to the individual who would be educated to the standpoint of knowledge and to the rationality now outwardly embodied. Such an introduction, however, is no longer a first part of systematic knowledge but an external propaedeutic for the student. This explains the interpretive puzzles described at the outset. The *Phenomenology* is at one time an essential first part of systematic science and at another time a non-essential pedagogical introduction thereto.

Several questions remain, however. First, what makes the 1807 *Phenomenology's* presentation of science qualified to perform the ladder-handing role for which fully systematic science is unqualified? After all, the *Encyclopaedia* could not scientifically comprehend the present world in terms of Spirit if the present world did not already manifest the unity of Spirit. What makes Hegel think that the *Phenomenology* can do what the *Encyclopaedia* cannot? Second, can we substantiate the thesis concerning the world-transforming role Hegel sees for the *Phenomenology* within its own philosophy of history? Third, what are the specific historical, cultural, and institutional conditions under which the *Phenomenology* can perform its bridging role? Fourth, do these conditions actually exist, and fifth, if they don't, what then? Is a Hegelian philosophy possible absent the conditions for Hegelian science, and if so, what form might it take? Addressing these questions requires an examination of substantial sections of both the *Phenomenology of Spirit* and the *Philosophy of Right*, and it is to the former that we now turn.

## Notes

- 1 Accounts of this dispute are provided by Otto Pöggeler, "Zur Deutung der *Phänomenologie des Geistes*," *Hegel Studien* I (1961), 255–94 and by H. F. Fulda, *Das Problem einer Einleitung in Hegel's Wissenschaft der Logik*, pp. 55–78. See the editors' "Vorwort" to H. F. Fulda and Dieter Henrich, eds., *Materialien zu Hegels Phänomenologie des Geistes*, pp. 7–36.
- 2 *Phän*, title page and pp. 21, 27.

- 3 *Briefe*, I, 161
- 4 *SL*, p. 11.
- 5 *Werke*, IV, 42, 112.
- 6 *SL*, p. 111.
- 7 This is the view of Terry Pinkard, *Hegel: A Biography*, p. 336.
- 8 *Phän*, p. 43 (*Phen*, p. 35).
- 9 *Phän*, p. 60 (*Phen*, p. 49).
- 10 *Enz*, para. 25. This passage is quoted below.
- 11 See Haym, *Hegel und seine Zeit*, p. 235 ff. See also Sinclair's letter to Hegel, February 5, 1812 in *Briefe*, I, 395–6.
- 12 Cited in Otto Pöggeler, "Die Komposition der Phänomenologie des Geistes," *Hegel Studien, Beiheft 3* (Bonn, 1966), p. 32.
- 13 Haym, *Hegel und seine Zeit*, p. 243.
- 14 Rosenkranz, *Hegels Leben*, p. 204.
- 15 *Ibid.*, p. 206.
- 16 See Fulda, *Das Problem einer Einleitung*, pp. 58–67. For a restatement of this view, see Robert Stern, *Hegel and the Phenomenology of Spirit*, pp. 21–29.
- 17 See Theodor Haering, "Die Entstehungsgeschichte der Phänomenologie des Geistes," in B. Wigersma, ed., *Verhandlungen des dritten Hegelkongresses vom 19. bis 23. April 1933 in Rom* (Tübingen und Haarlem, 1934), pp. 118–38; Otto Pöggeler, "Die Komposition," pp. 27–74; For an argument upholding the unity of the *Phenomenology* see H. F. Fulda, "Zur Logik der Phänomenologie von 1807," *Hegel Studien, Beiheft 3* (Bonn, 1966), pp. 75–101.
- 18 See F. Nicolin, "Zum Titelproblem der Phänomenologie des Geistes," *Hegel Studien, Beiheft 4* (Bonn, 1967), 113–23.
- 19 On the *Phenomenology* as palimpsest see Haym, *Hegel und seine Zeit*, p. 238 ff.; Pöggeler, "Zur Deutung," *passim* and "Die Komposition," *passim*. In accordance with the terms of his contract with Goebhardt, the eventual publisher of the *Phenomenology*, Hegel advanced him half the manuscript, in return for which he was to receive a much needed pecuniary advance on the book. Goebhardt, however, demanded to see the balance of the manuscript in order to satisfy himself that the portion advanced really constituted one-half. At this point Hegel's friend Niethammer interceded and persuaded Goebhardt to remit Hegel the agreed sum in return for his (Niethammer's) guarantee that the entire manuscript would be in the publisher's hands by October 18, 1806. Hegel rushed to meet the deadline as Napoleon's troops marched on Jena. For all this see *Briefe*, I, 112–9. Given these circumstances, it is easy to see why Hegel did not rewrite the first half of the *Phenomenology* in light of his altered conception of it.
- 20 Haering, "Die Entstehungsgeschichte," pp. 119–20. Haering's thesis is accepted by Walter Kaufmann, *Hegel: A Reinterpretation*, pp. 88–95.
- 21 Haering, "Die Entstehungsgeschichte," pp. 122–3. Cf. Rosenkranz, *Hegels Leben*, pp. 159–60.
- 22 Haering assumes that the introduction to the system was originally to have concluded with the chapter on Reason and that the last three chapters were therefore completely improvised ("Die Entstehungsgeschichte," pp. 129–30). Pöggeler, however, argues persuasively that the original plan included the chapters on Spirit, Religion, and Absolute Knowledge but without giving them an autonomous development ("Die Komposition," p. 46 ff.). The second plan differs from the first, then,

only in having expanded and reorganized existing chapters, not in having added new ones.

- 23 Haering, "Die Entstehungsgeschichte," pp. 132–3.
- 24 Haering, "Die Entstehungsgeschichte," p. 133.
- 25 This is not to deny that light can be thrown on the *Phenomenology* by studies of its development from Hegel's earlier writings. See Pöggeler, "Die Komposition," and R. Bubner, "Problemgeschichte und systematischer Sinn einer Phänomenologie," *Hegel Studien, Beiheft 5* (Bonn, 1969), 129–59.
- 26 *Enz*, para. 25. My emphasis.
- 27 (*Phän*, p. 60), (*Phen*, p. 49).
- 28 Marx, *Economic and Philosophical Manuscripts*, ed. Struik, p. 177.
- 29 See Georg Lukács, *The Young Hegel*, chs. 3–4; Ernst Bloch, *Subject-Object. Erläuterungen zu Hegel*, pp. 53–100 and "Das Faustmotiv der Phänomenologie des Geistes," *Hegel Studien*, 1, (1961), 155–71; Alexandre Kojève, *Introduction à la lecture de Hegel*.
- 30 Lukács, *The Young Hegel*, pp. 466–533.
- 31 *Phen*, p. 14.
- 32 *Phän*, p. 21 (*Phen*, p. 15).
- 33 *Phän*, p. 29 (*Phen*, pp. 21–22).
- 34 *Phän*, p. 18 (*Phen*, pp. 13–14).
- 35 *SL*, p. 48 ff.; *Enz*, paras. 17, 36, 238, 242.
- 36 *Phän*, pp. 27–28 (*Phen*, p. 20); *SL*, p. 47; Cf. Fulda, *Das problem einer Einleitung*, p. 112 ff.
- 37 *Phän*, p. 6 (*Phen*, pp. 3–4).
- 38 The presupposition of the *Phenomenology* is explained more fully below, Chapter 4, Section 1.
- 39 *Phän*, p. 6 (*Phen*, p. 3).
- 40 *Phän*, p. 60 (*Phen*, pp. 48–49).
- 41 Martin Heidegger considered this the complete answer to the riddle; see *Hegel's Phenomenology of Spirit*, 1–32.
- 42 *Phän*, pp. 19–21 (*Phen*, pp. 14–15).
- 43 *Phän*, p. 22 (*Phen*, p. 16).
- 44 This account agrees with H. S. Harris that the *Phenomenology's* chapter on world history, far from being an incoherent add-on to the progress of the individual ego to ethical substance, "is what matters most" to the *Phenomenology's* project, for it shows that the "substance is as much subject as substance." See *Hegel's Ladder*, p. 11.
- 45 Michael Forster too sees the *Phenomenology* as serving a practical function, but for him that function is to "enable modern men to achieve genuine happiness" in the existing social world by altering their "mental outlook" so as to see the dualisms that make them unhappy as already resolved in unity; see *Hegel's Idea of a Phenomenology of Spirit*, pp. 18, 22, 61–104. By contrast, I argue that Hegel means the *Phenomenology* not only to alter our consciousness but also, by doing so, to enable a practical transition from the state in time to the State in Reason.

## History Conceptually Understood

...consciousness takes as the middle-term between universal Spirit and its particularity or sense-consciousness the system of configurations of consciousness [regarded] as the self-totalizing life of Spirit—the system that is dealt with [in this treatise] and which has its objective existence as world-history.

*Phän*, p. 199 (Phen, p. 178)

We may be assured that it is the nature of truth to break through when its time has come, and that it appears only when its time has come, and hence never appears too soon, nor finds a public that is not ripe for it...

*Phän*, p. 53 (Phen, p. 44)

### 1 The *Phenomenology's* Limited Assumption

So far I've argued that Spirit's self-knowledge as the law of reality requires that the opposition of universal and particular wills in modern civil society have already been overcome and that political life exhibit the unity-in-otherness (mutual recognition) of universal and particular wills that Spirit is. Without this unity the systematic exhibition of Spirit's world sovereignty would have, as we saw, a self-destructive result. By falsifying reality, it would exhibit Spirit as an artificial construct. Nevertheless, our discussion to this point has also revealed a need for a philosophic demonstration of Spirit's world sovereignty to a world not yet explicitly ordered to it. For it is just this demonstration that, by mediating the opposition between public authority and the atomistic individual's independence, allows each side to submit to the other without self-loss. In this way, Hegel's philosophy forms a bridge (or "ladder") from the bifurcated body politic in time to the unified one that fulfills history and from the love of wisdom to the science of wisdom. In view of our first conclusion, therefore, we must now question the possibility of such a bridge. And we must raise this question on behalf of both philosophers and political activists.

First on behalf of philosophers. Recall that the main challenge facing Hegel's absolute idealism was to surrender unreservedly to the independence of the material world while still maintaining intellectual mastery of it. In the *Encyclopaedia*, the possibility of meeting this challenge lay in the very nature of the fundamental idea by which the philosopher understood the world. That idea is *Absolute Spirit* understood as the implicit unity-in-otherness of universal and particular wills already become explicit through civil society's *spontaneous* return to this unity out of bifurcation. However, in a world not yet explicitly reflecting Spirit, Absolute Spirit is not available to the philosopher as a fundamental world-understanding idea. In such a world, therefore, Spirit's self-knowledge as the law of reality cannot move entirely within an eternal order recognizing Spirit's sovereignty; it must rather consist in understanding the necessity in accordance with which natural consciousness advances through time to Hegel's grasp of Spirit.

But precisely here a problem arises. How will Hegel's philosophy demonstrate the logical necessity of its appearance in time without presupposing the very idea to be demonstrated? Hegel admits that in 1807 philosophy has no right to this presupposition.<sup>1</sup> That is why, in the introduction to the *Phenomenology*, Hegel assures us that he will not judge natural consciousness's claim to knowledge from his own standpoint but will simply "look on" at the self-criticism of natural consciousness, forbearing to pass a single judgment that natural consciousness does not pass upon itself.<sup>2</sup> Indeed, he tells us, he will not judge at all. As consciousness both of an object and of its own consciousness of an object, natural consciousness itself distinguishes between the object as it exists for consciousness and the object as it exists in itself. That distinction is native to a consciousness capable of self-consciousness. So, natural consciousness itself asks whether the reality it apprehends is reality in itself or merely for consciousness. It judges its own knowledge as veritable or subjective, absolute or relative. Therefore, Hegel can simply look on passively at the process by which natural consciousness examines and criticizes itself.

But now another problem arises. If Hegel will simply immerse himself in the self-criticism of natural consciousness, contributing nothing at all, how will he show that this process consists of logical steps leading to the appearance of Spirit? How will he show that his own idea is the goal of this process and that the various stages along the way form an interconnected and intelligible sequence? The dilemma, in other words, is this. If, from an external vantage-point Hegel explains the movement of natural consciousness as a coherent, teleological narrative leading to his own idea, then he assumes the very explanatory idea he has to prove to natural consciousness. On the other hand, if he surrenders completely to the internal self-criticism of natural consciousness, then he explains nothing not already explained by the consciousness he observes. He then produces a history of ideas leading to nowhere in particular.<sup>3</sup>

Hegel responds to this dilemma in the following way. In fact, the philosopher cannot remain completely passive; he must contribute something to the

process he observes.<sup>4</sup> Specifically, he must interpret (not judge or criticize) natural consciousness's self-criticism in the light of an idea unknown to natural consciousness itself. To be sure, the philosopher may not interpret that process in the light of *Absolute Spirit*; he may not presuppose the Whole considered as having ingathered its polarities and become explicitly realized as a Whole. Nevertheless, the structure of the relation called Spirit yields the philosopher a more modest assumption – one that Hegel believes tenable even in a world fragmented into the opposites that Spirit unites. What assumption is this?<sup>5</sup>

The ego in its natural immediacy is an atomistic, insular ego – an ego unconnected with others. As such, it is for itself and indifferent to others, always putting its particular self-interest above the restraints all would agree to. Now, because it regards its isolation as its fixed nature, the natural ego always lives with an intractable conflict between law and nature, or between the calling of its rational essence, wherein all egos are equal and identical, and its natural egoism, by which it is inclined to put itself above others. Given this opposition between its rational essence and its natural inclination, the natural ego must regard its rational essence as sufficiently what it purports to be (a human essence) in this one-sided juxtaposition to its natural inclination; and so it must regard a lawful state of affairs as defining its essential nature independently of its realization as such – independently of whether the natural ego acknowledges a lawful condition as its own end or good. The natural ego will thus regard its rational essence as a truth about itself whether or not it is recognized as such or has practical authority; and it will, correlatively, regard itself as naturally indifferent to its rational essence – as inclined by nature to selfishness and lawlessness.

Now, Spirit's structure yields the following limited assumption. The fixed antithesis that natural egos take to exist between their rational essence as equals in law, on the one hand, and their natural tendency always to privilege themselves, on the other, is in reality the internal opposition of one Whole to itself and so is at the very least inherently or potentially reconciled. Here "potentially" is understood in a primordial, not in an historical or *de facto* sense. By limiting himself to this assumption, Hegel is in a position to experience along with natural consciousness epochs wherein, owing to the entanglement of the ego's claim to separate end-status with its claim to privileged end-status, the opposition between the ego's rational essence and its separate end-status is, as a matter of historical fact, irreconcilable; and so he can passively understand points of view for which natural law is hostile to the particular ego's separate worth, hence repressive as much of its reasonable self-regard as of its tendency to vainglory.

At the same time, however, this assumption gives Hegel the leverage he needs to understand the self-criticism of natural consciousness as a rational process – a coherent narrative leading toward a goal. This is so because, if the opposition between humanity's rational essence and the natural ego's claim to privileged/separate end-status is the self-opposition of one Whole to itself, then

there is a latent nexus between (a mutual presupposition of) these extremes of which natural consciousness is unaware. That such a nexus exists carries two implications. One, the individual ego is *not* fixed in its natural immediacy. Moved by the disparity between its believed essence and its factual existence, the ego transcends itself by action toward civic union under law or moves from potentiality to actuality. Two, the supposed rational essence is truly such, not in its abstract one-sidedness, but only as realized as the universal end of rational beings through the self-transcending action of the individual – that is, through the natural ego's cancelling its immediacy and submitting to law's authority. So Hegel will be able to observe and understand the mutual dependence and attraction of the extremes that natural consciousness holds to be mutually indifferent.

But that is not all Hegel will be able to understand. Because the natural ego takes its isolation for a fixed condition, it must, as we said, equate the determinate ego's claim to a distinct end-status with its own claim of privileged end-status – with its own egocentricity. Given this equation, it must regard the ego's rational essence as an abstractly universal law for which egos are cognizable only as identical or merged into one – as a “natural law” whose universality and objectivity depend on excluding from recognition the determinate (equated with the immediate) ego as such. Therefore, the recognition process by which the rational essence and the determinate ego are brought together for mutual realization must end in their mutual destruction. The rational essence will be unable to survive its union with the determinate ego because it was constituted precisely by repulsion of a determinate ego equated with the natural ego. Mingled with its incompatible opposite, natural law will become perverted into the particular will of a natural ego. Correspondingly, the individual ego's certainty of its worth in law will come to nothing; for it will find itself normatively defenseless against an absolute personal rule.

Now, Hegel will simply observe this negative result – this negation both of the rational essence and of individual worth – without applying his own conception of the individual ego's rational essence – namely, Spirit. But he will draw several conclusions from this result that natural consciousness does not. First, whereas natural consciousness will view the arbitrary power to which it is exposed as lying inertly external and alien to it – as the way of a non-rational and indifferent world – Hegel will understand this power as the self-estranged or self-contradictory realization of a human project aimed at dignity. He will understand it, that is, as the product of a human purpose gone awry.

Second, whereas natural consciousness will see in the negative result a negation of natural law simply (and will thus wallow in cynicism or nihilism), Hegel will see the negation only of a specific conception of natural law – a determinate negation, as he calls it.<sup>6</sup> The negation will therefore have a limited implication; it will justify not a free-standing skepticism or moral relativism but only disillusionment with a reified, say, or a too formally conceived version of natural law. So cabined, the negation will contain the possibility for reconstruction – for



movement forward to a new conception of natural law now inoculated against the infection that killed the previous one.

Third, whereas natural consciousness will take up a new conception of natural law without knowing how it came by it, Hegel will understand the new conception as having arisen from the experience with the downfall of the old – specifically, from philosophers’ conceptualizing or grasping in thought the experienced interdependency of extremes formerly believed to be mutually exclusive and indifferent. So, Hegel will understand the new conception of natural law as involving the synthesis in thought of the opposites previously brought together in practice – or as involving the unification of the previous conception with the element its downfall revealed it as lacking. Without, therefore, judging the various conceptions of natural law held by natural consciousness, Hegel will understand the *genesis* of these conceptions – both the logical necessity of their appearance and the connection between them. While a given attitude of natural consciousness will regard its conception of natural law as a timeless essence dropped, as it were, from heaven, Hegel will comprehend that conception as to its *timeliness*.<sup>7</sup>

He will do so, however, without espousing “historicism.” That is, he’ll be able to say that all natural law conceptions are historically prepared, hence belong to an epoch, without falling into a historical relativism denying the possibility of an absolutely true conception or putting humanity’s freedom endlessly to reconceive its possibilities in place of a primordially given human end or destination. This is so because the primordial nexus called Spirit will allow Hegel to understand the temporal succession of natural law conceptions precisely as a “history” – a coherent sequence having as its goal the absolutely true conception – Spirit. In this way, Hegel will mediate (in a historicist teleology) the opposition between the ahistorical teleology of the ancients and the non-teleological historicism of the late moderns.

Accordingly, Hegel’s passive looking on at the experience of natural consciousness can yield new knowledge about that experience if to the given temporal content Hegel contributes the dialectical structure just described. But will not this contribution make for a strange kind of passivity? Granted, Hegel can defer to the distinctions between nature and convention, objective law and subjective caprice, drawn by natural consciousness itself; and he can allow the latter to test its conceptions of humanity’s rational essence against its own standards and by its own lights. But that this self-testing and self-criticism lead necessarily to Spirit is demonstrable, as we now see, only by the philosopher’s fitting the historical material into a dialectical logic derived from the very nexus the material was supposed to prove independently. Philosophy, it turns out, will not accept the self-criticism of natural consciousness on its own terms; it will instead insist on imposing a structure on this process derived from Spirit.

This is the place to raise an objection to Hegel’s proposed procedure on behalf of political idealism. We saw that Hegel’s philosophy invites the cessation of efforts to realize a utopian vision of civic and psychic harmony *against*

the bifurcation of modern civil society by showing utopian idealists how the harmony they seek already lies before them in the political order of the present. It appears now, however, that Hegel expects this conversion to conservatism to flow from a demonstration that the opposed extremes of civil society are reconciled primordially and that history is the becoming of this harmony. Such a demonstration, if carried out in the teeth of the present intractability of the conflict, could hardly lay claim to the mantle of science. But neither could it bring the opposites to their unity in Spirit. For, as we've seen, philosophy can mediate the conflict between universal and particular wills only by showing that their mutual submission is compatible with the preservation and fulfillment of both. This, however, it does not accomplish simply by asserting the primordial reconcilability of extremes that, in the historical present, remain implacably opposed.

We can see, however, that both objections – that concerning the contribution of philosophy and that concerning the gulf between what philosophy asserts is primordially true and what is *de facto* the case – are met at once if the primordial potential grasped in thought has become, prior to the advent of Hegel's philosophy, a potential in historical fact and if Hegel's grasp of Spirit is thus itself understood in its timeliness. On this condition alone can philosophy reconcile an unreserved surrender to its object with intellectual mastery thereof; for only then is its explanatory idea independently confirmed by its object as immanent. Only on this condition, too, can philosophy call for political idealism's surrender to the present without exposing itself to accusations of quietism and servility to the powers that be; for in this circumstance alone would philosophy's middle term be the *one thing still needed* to raise the inherent harmony to an actual one.

This, then, is how Hegel's philosophy can vindicate Spirit as the law of reality to a people not yet explicitly ordered to Spirit's rule. The *Phenomenology of Spirit* will not require, as the final system does, that political life be actually unified. For rather than expound reality in terms of the actual reconciliation of the universal and particular wills, the *Phenomenology* will do so in terms of their primordial reconcilability. And this presupposition is validated if and when the primordial potential has become an existing one – if and when, in Hegel's words, "brute existence (*Dasein*) has no longer to be changed into the form of the potentially rational (*Ansichsein*), but only the already recollected potentiality [no longer merely primordial nor hidden in existence] into the form of the actually rational (*Fürsichsein*)."<sup>8</sup>

Our objectives in this chapter are three: first, to test Hegel's claim for Spirit's world-governance by applying the historical truth condition just described – a truth condition the philosophy itself acknowledges and to which it happily submits; this will necessitate determining (and judging the presence or absence of) the historical conditions that make the times ripe for Spirit and that enable the *Phenomenology* to perform the mediating and bridging roles I've ascribed to it; second, to show that the *Phenomenology* understands itself as performing

this role – that is, of providing (through its middle term) a bridge from the bifurcated state in human time to the harmonious one that fulfills divine-human history; third, to show that political life's wholeness is inconceivable except as proceeding from the Greek *polis* and its inadequacy to its own dialogical principle. This will confirm that, contrary to a common opinion, Hegel's final State is not the modern state ordered to human rights but rather the Greek *polis* organically developed to embrace modernity's human rights.

Given these objectives, we can focus for the most part on Chapter 6 of the *Phenomenology*, the one that exhibits world history as a logically coherent, teleological narrative. Since our aim is partly to test Hegel's claims for this coherence, I try to reproduce Hegel's dialectical method of historical understanding. This is also essential to our understanding Spirit's historicity – its availability (despite being always present) only at a particular historical juncture; for the world's readiness for Spirit at any one period of time is only fully understood when we have understood its unpreparedness at all previous periods – or, to make the point positively, when we have understood the timeliness of all previous conceptions of natural law. Consequently, we must understand with Hegel the logical genesis of each new conception as well as the logic of its downfall and transition to the next. This twofold rational necessity can be elicited by posing the following three questions throughout:

- (1) Given a certain conception of humanity's rational essence, does the empirical existence of the individual ego correspond to its essence? A negative answer yields the necessity for the individual's self-actualization – for converting his subjective certainty of final worth into knowledge.
- (2) Does the resultant realization of the conception of natural law in fact realize it or does it dissolve natural law into conventional or personal will and force? Alternatively put, does the embodiment of humanity's supposed essence correspond to the essence? A negative answer yields the necessity for the transition to a new conception of natural law.
- (3) How can the specific extremes brought together by the action of the individual ego in (1) be grasped in their inward and essential unity? The answer to this question gives us the new conception of natural law and therefore its timeliness.

We begin, then, with Hegel's account of the origin of the first rational conception of humanity's essential nature – the Greek *polis*.

## 2 The Ethical Life of the Polis

### 2.1 *The Polis as a Work*

If divine history begins with the Word, the history of the West begins with a deed.<sup>9</sup> The self of a people emerges from nature on the strength of productive activity, for it is through creative work that a self-formed purpose juxtaposes itself to nature and that nature is shaped into an embodiment of purpose.

Directed upon nature, productive activity is also performed “at the expense [there]of,” for nature’s erstwhile divinity is thereby overthrown.<sup>10</sup> From the sole enduring reality, nature becomes a subordinate medium for human self-expression.

The productive activity meant here, however, is not the work of the tool-maker or crafter of household vessels. It is not the activity of *Homo faber*. In the lead-up to the *polis*, Hegel showed how not even the most autarchic productive activity by an individual – the work, say, of an artisan or artist who depends on no other free will for his means of production – is adequate on its own to self-determination.<sup>11</sup> His point was that production by atomistic agents engenders a distinction between the work process and the work product that no individual agency can envelop. In the work process, the producer realizes his self-formed purpose by means of natural talents and materials, transforming these found things into vehicles for his autonomous self-expression. This activity is joyful because productive of psychic unity. Productive work harmonizes both the generic and idiosyncratic aspects of the individual ego as well as the subject and object sides of self-consciousness. Free agency expresses itself through individual ends and talents, while the object over against the subject is now a product that reflects the subject’s ends.

However, the work product is a two-faced monster. While reflecting back the producer’s agency, it also faces other agencies. As an object in the external world, it stands partly outside the straightforward relation to its producer whose purpose it embodies. It stands also in a public world where it is now a means for others, who are free to make of it what they will. What they make of the producer’s work is beyond the control of the producer. Someone might interpret Hegel’s work as if it had been written by Heidegger or Marx or Kant, turning the work into something alien to the producer’s purpose. In this way, self-expression in the work process becomes self-estrangement in the work. For Hegel, this outcome is not, as Marx thought, peculiar to hierarchical productive relations between owners and non-owners of the means of production; it is a necessary feature of labor among atomized producers, even if the producers are the artists and scholars whose work Marx romanticized. By becoming a thing for external others with projects of their own, the work product contradicts the self-determination the producer enjoyed in the work process. The producer might try to deal with this contradiction by separating the process from the product and treating the process as the essential thing and the product as insignificant. But this is self-deception because it is impossible to *produce* a work without producing a *work*. Process and product are inextricably connected.<sup>12</sup>

The self-estrangement of the atomistic producer in his product is overcome in the *polis*. The collective agency of the *polis* embraces the distinction between product for self and product for others that no individual agency can encompass alone. The *polis*’s agency is realized as an end through the political *work* of individuals – through their free service to the *polis* in the assembly, the jury,

and the military. This work creates and recreates a *product* – the political community – that is also an object for others. But the product's being an object for others no longer implies self-exposure to alien egos because the work product is now the same for all producers; it is a common work, the product of a cooperative work process. The meaning each places on the other's work is now the same as the meaning each places on his own. They all mean to produce Athens, and Athens has a public meaning for all its citizens.<sup>13</sup>

So the productive activity that inaugurates the West is that by which the universal agency of a people distinguishes itself from nature's causes, deposes nature as sovereign, and transforms natural individuals into citizens who freely make the *polis* the common end of their work.

This historic revolution, depicted in the story of the Olympic gods' victory over the Titans, alone opens up for the human individual an objective worth transcending his brute existence. This is so because only given the primacy of universal self-consciousness does the individual play a necessary part in actualizing through civic virtue the end-status of that which he takes to be sovereign. Nature has no need of the individual, and so its equation with essential being entails the individual's nothingness. Thus, in ancient China, the people is ruled by a patriarchy and moral code both prescribed by nature, and the individual is correspondingly without dignity; he is sacrificed to gods personifying natural forces and enslaved to despots.<sup>14</sup> Likewise in ancient India, the people's subjection to a hereditary caste-system is reflected in the individual's inability to find personal significance by any means short of self-annulment in *Brahm* – the unity of nature.<sup>15</sup> Not until Egypt's "taskmaster" begins to change the face of nature with stone blocks arranged to form a rational shape does the individual begin to sense his enduring worth. It was the Egyptians, says Hegel, who "were first to express the thought that the soul of man is immortal."<sup>16</sup>

Yet in ancient Egypt, human self-activity is only incipient. No doubt, the taskmaster uses nature for his own creations and in doing so produces himself as a free end. But he does not yet work *in order to* realize himself as an end. His work does not yet have as its conscious purpose the emancipation of selfhood from nature and its realization as the end thereof. Not yet fully self-conscious, the taskmaster's labor is rather "an instinctive kind of work, like bees building their cells."<sup>17</sup> And so instead of freeing and embodying selfhood, Egypt embodies only the ambiguity involved in an instinctive labor, which is neither merely instinctive nor fully labor. A riddle to itself, it at length creates the Sphinx – half beast, half man – who gives voice to this riddle.<sup>18</sup>

The ambiguity's physical embodiment is already its resolution, at least potentially. Hitherto objective reality has confronted individual consciousness as a given nature whose fundamental reality excluded its own. In Egypt, however, the world over against consciousness is a civilization in which nature is formed to intellect and intellect realized in nature. Grasped lucidly by the Greeks, this nexus between self and nature is the mind (*Geist*) of a united people (*Volk*) – the solution to the riddle of the sphinx.<sup>19</sup> Before this god the individual is no

longer worthless, nor is his immortal dignity murkily sensed as the indestructibility of the mummified body. Because the collective self's end-status requires the individual's civic virtue to realize it, the individual comes to his own rational importance in ethical work for the people.

Accordingly, *Geist* here designates the ethical life (*Sittlichkeit*) of a people united by their common dedication to giving reality to the end-status of their collective self. It denotes, in other words, not the collective self alone but a multitude ethically self-directed to the primacy of the collective self. Insofar as this ethical life is an ethical "world" externally given to individual consciousness as immemorial custom, it is the ethical life of the ancient *polis*.

## 2.2 The Ethical World

The mind of the *polis* is a one-sidedly objective mind. It exists as a self-sufficient objective reality (a "world") given to the individual as immemorial custom and divided into spheres of family and state that, for the individual, are as firmly fixed in the nature of things as the division between night and day. As a self-complete objective mind, the *polis* excludes any role for the individual's subjective insight into the rightness of its laws and institutions. It requires the individual's virtue but not its insight, which is to say that it requires what Plato called political as distinct from philosophic virtue. To say that the *polis* mind excludes any role for the subject's insight is to say that the *polis* mind's authority is not answerable to insight. That authority rests solely on its having existed time out of mind, its forgotten origins the token of its naturalness. But why is the *polis* an objective mind unaccountable to subjective insight? Why is it an inscrutable mind?

The *polis* mind is a human mind set over against the atomicity of nature. It is a whole that embraces the difference between a collective self and an individual self; but this whole is still one-sided in relation to the atomicity outside it. Since, moreover, the atomistic individual is the separate individual (the individual who is not a *member* of the *polis*), the *polis* mind also denies essential being to the separate individual. It does so because it equates the separate individual with the animal individual – the brute natural organism – and for a good reason. So far the atomistic individual *is* the animal individual. No separate self-consciousness has yet developed in it. The only mind the individual has is the shared one.<sup>20</sup> That is why the *polis* mind is a one-sidedly objective mind, excluding a role for subjective insight, resting its authority on its simple being there. For the *polis* to be answerable to the separate individual, it would have to defer to the very nature whose authority its revolution deposed. But of course this means that when a subjective mind does develop and demand satisfaction (as occurs with the sophists and Socrates) the *polis* mind will be unable to answer.

Accordingly, the time is far from ripe for grasping a divine Spirit that connects an objective mind with a separate and independent subjective one. The separate individual is epochs away from being potentially reconciled with the end-status of a collective self. Possessing no other significance than that of brute

animality, its being recognized is incompatible with that end-status. For the Greeks the individual who is separate from the *polis* is not human.

To understand the rise and fall of the *polis*, Hegel first separates what he knows to be inherently inseparable. He distinguishes between the *polis* as an inert structural order confronting individuals as a world and the *polis* as this structure vivified and reproduced by the ethical action of individual citizens. The purpose of this distinction is to understand the nexus of the sides distinguished by first examining them separately. More specifically, it is to understand, first, the architectural harmony (beauty) of the *polis*; second, the internal necessity for this order to realize itself in the patriotic actions of individuals; and third, how the *polis*'s realization as the individual's natural end destroys it as such.

The ethical world divides itself into two mutually complementary spheres (*Massen*), the public and the private. There is no dichotomy or opposition here. The division falls within a whole, and the source of this division is the purposive productive activity discussed above. In that activity, agency distinguishes itself from the biosphere and reduces the biosphere to a reflection of agency. In the present context, this means that a universal (public) agency distinguishes itself from natural individuals and their need-based (private) associations and transforms them into citizens and ethical families, respectively. Because the distinction between universal and particular is engendered by self-conscious action, it falls within a unity such that each pole requires and complements the other. The primacy or end-status of the universal self is confirmed by the free civic-minded work of the individual, whose essential being and worth are reciprocally confirmed by the universal's need for his voluntary service.<sup>21</sup>

Because the division between the spheres falls within a whole, each presupposes the other and so implicitly contains the other within itself. Each is thus inherently the whole of which it is a part. That is why, *qua* part, each is incomplete without the other (is not actually the whole that it is inherently), hence requires the other to fulfill its inherent nature. So, the ethical world is a totality formed by the complementarity of its distinct elements, each of which is implicitly the whole. This is the beauty of the *polis*, and to appreciate it, we have to understand with Hegel how the two parts of the whole interlock.

The two spheres of the ethical order are the family and the state. The family is a natural ethical community – natural because originating from sexual desire and biological reproduction, ethical because held together by bonds of love and mutual care. The state is the universal agency of a people conscious of itself as an authoritative ethical power. Those who represent the people's agency regard it as the fundamental end of individuals and families – one endowed with the power to actualize its end-status against those who put their particularistic interests first.

Now, because the whole's division into these spheres originates in the self-conscious productive activity of an objective mind, it is (at the outset of Greek history) a natural division, not a conventional or optional one. Hence each

sphere is the custodian of a natural law binding on the individual. The state's natural law is the human law (there is no distinction yet – *nomos* is *physis*), so called because it is directed to public purposes self-consciously posited by a clear intelligence.<sup>22</sup> Apollo, god of light, personifies the human law. The natural law pertaining to the family is the divine law. Comprising the duties owed amongst family members, it is unwritten, unconscious, not so much known as instinctively felt. The Furies, goddesses of the night, execute the divine law by visiting natural retribution on the parricide, matricide, and those guilty of incest and adultery. The sum of human law is civic virtue, the sum of divine law the honor and care owed to parents, children, spouses, and siblings. Whereas the point of human law is to effectuate the state's primacy over particularistic self-interest, the end of divine law is the objective value of the determinate individual. Human law respects the individual only as a citizen – an Athenian or Spartan – demanding that he become one; divine law values the individual apart from his citizenship and regardless of his civic virtue; it enjoins a sister, for example, to honor her brother in his abstract immediacy, just as he is given, even if he is a would-be usurper.<sup>23</sup> The two laws thus seem to conflict.

Actually, however, they complement each other. To see this, consider first the favorite of divine law – the individual in his or her natural immediacy. Now, taken in abstraction from self-conscious action for a universal end, the living individual lacks substantial reality. He might as well not be as he is; his fortunes are always changing; his existence is pointless and evanescent. Only in death does this abstractly immediate individual gain a stable reality of sorts, because in death his fortunes are no longer uncertain, and he is no longer in flux. He has come to an end. Solon's saying, "Count no man happy until he is dead" captures the comedy of death's stasis as much as the tragedy of life's fluctuations.

And yet death lacks even this significance apart from human self-consciousness. Considered in abstraction from self-consciousness, death has no meaning whatsoever; for self-consciousness is precisely the origin of meaning, point, and purpose. Only, therefore, if the abstractly natural event is presided over by ethical action directed toward a purpose does death gain the significance of stasis or stabilization, so that the deceased can be preserved in being. Accordingly, the institution that best fulfills divine law is a human institution – the funeral rite. By virtue of this ceremony alone does the abstractly immediate individual gain the immortality of which it is capable – one consisting solely in the preservation of the bodily organism. The departed is made a denizen of the netherworld, there to endure as an "unreal characterless shade" – what the modern imagination pictures as a zombie.<sup>24</sup>

The divine law's realization in the funeral rite shows that, if the content of divine law is given by instinctive family feeling for this particular individual, its formal presupposition is universal self-consciousness. It is only by virtue of human self-consciousness that death acquires the meaning of stasis that a funeral gives it by having stasis for its conscious purpose. But the divine law is dependent on human law in yet another respect.



Human law, we saw, enjoins civic virtue – the subordination of separate self-interest to active love of the *polis*. This law gains a partial, lower-order realization in the family, for the family too is a community wherein members put familial duties above narrow self-interest. Because the virtue enjoined by human law is incipient in the family, blood relationships are transformed into ethical ones, instinctive tendencies into moral duties. Here again nature is redirected to an end posited by intellect. This means that the determinate individual valued by divine law is not confined to a netherworldly being as a shadow; he or she can acquire a rational importance and dignity in the upper world by performing the ethical roles and carrying out the moral duties of spouse, parent, adult son or daughter, and sibling. So, it is only by virtue of the human law enjoining virtue that performing familial roles gives dignity to determinate lives. The divine law enjoining honor for the determinate individual gains an upperworldly realization only thanks to the human law enjoining civic virtue as the human individual's end. Human law completes and confirms divine law.

Now, because human law realizes and completes divine law, it is reciprocally confirmed as a *natural* law (as distinct from the violence against nature of a conventional order) by the divine law. We see this depicted in Aeschylus's *Eumenides*. Orestes's avenging his slain father against his adulterous mother is siding with human law at the expense of divine law, inasmuch as he commits matricide to uphold the ethical relationship of marriage. The Furies prosecute him, and Apollo defends him. The jury is deadlocked, and the goddess Athena casts the deciding vote in favor of Orestes, thus backing with divine authority his vindication of human law. But how, conceptually, is human law confirmed as natural law by divine law?

Human law is realized partially in family life and consummately in war. In the family, sexual desire is subordinated to stable relationships of mutual care; in war, the particularistic interests of families are subdued to the self of the people – private loyalties to loyalty to the city.<sup>25</sup> But the force thereby exerted by the whole against the particularism of families is confirmed as natural authority by the family's being itself a partial ethical community. Civic virtue is the perfection of the virtue incipient in family life; it is the subordination of separate self-interest to the comprehensive community that completes the subordination of separate self-interest to a partial community. Thus, the sphere to which divine law specifically pertains confirms the naturalness of the force exerted against it. Furthermore, the divinity of divine law inheres in its darkness and inscrutability. But the origin of human law is itself dark and inscrutable; it presents itself as a custom independently given to consciousness, and "no one knows whence it came."<sup>26</sup> So human law derives its authority from a feature characteristic of divine law – Athens is a goddess. Finally, the *polis*'s demanding the life of its citizens in war is confirmed as natural and just authority by the spontaneous ethical action of individuals seeking the honor that divine law itself promotes. Accordingly, just as the divine law enjoining respect for the

determinate individual requires the completion it receives from human law, so does the human law enjoining civic virtue require the legitimation it receives from divine law. Each depends on and fulfills the other. Why did this beautiful harmony not last?

### 2.3 Ethical Action

Thus far Hegel has examined the *polis* as an objectively given natural order, not yet as an order vivified by action in conformity with its laws. In their mutual detachment, however, both the ethical order and the individual agent are self-contradictory. As an inert conceptual interlocking of parts, the ethical order is not yet actually what it is inherently. Originating in self-conscious productive activity, the ethical order is in its nature the unity of form and reality, thought and action. Yet, as a conceptual unity of parts, it is but a form divorced from reality. So the ethical order, *qua* mere order, is inadequate to its own nature. Likewise does the detached existence of the individual contradict his nature as he now conceives it. Given the primacy of universal self-consciousness over nature, the individual potentially has objective worth as one who realizes that primacy by fulfilling an ethical role in the *polis*. Detached from the *polis*, he or she is an “unreal shade.” So, that which at once realizes the inherent value of the individual and the natural authority of the *polis* is ethical action for family and state. Since, moreover, the *polis* – its institutions and the laws pertaining to them – is here equated with natural law, that action is alone ethical which conforms unquestioningly to the laws as found.<sup>27</sup>

Yet ethical action proves to be not the realization of the *polis* and the individual but their mutual subversion and destruction. Hegel writes: “What [in the ethical order] appears as the order and harmony of its two substances, each of which confirms and completes the other, becomes through action a transition of opposites into one another, whereby each proves to be the annihilation rather than the confirmation of itself and the other.”<sup>28</sup> Let us see how this happens.

Ethical action, precisely because it is naïve and uncritical, activates the contradiction that has lain dormant in the ethical order from the start. The contradiction is this. On the one hand, the universal self of a people claims primacy or end-status vis-à-vis the nature it finds, treating the immediate as non-essential, vanishing, etc., as it transforms what it finds into a medium of its clear and purposeful agency. On the other hand, the universal self depends for the confirmation of its natural authority on a divine law that values the immediate individual and reposes its divinity on opacity. So the *polis* is the contradiction of a rational essence that depends for its confirmation as the individual’s essential nature on the very law it must denigrate and replace in order to realize its primacy. How an unquestioning obedience to custom triggers this contradiction is explained by Hegel as follows.

Natural law is identified with the customary order understood as the dialectical whole – the complementarity of opposites – Hegel has described. As we

saw, neither part of this whole is complete without the other; each is realized only as mediated and confirmed by the other. Because, however, the whole fuses self-consciousness with nature as found, the distinction between the parts tracks the distinction between the sexes. The family is the horizon of the female, the state the preserve of the male. The female achieves fulfillment as wife, mother, and sister, as preserver of the home and of the divine law. The male is fulfilled only in rising from the sentimental life of the family to the rational virtue of the citizen. What one can become in the *polis* depends on the body because at this point in history dominant natural tendencies (physical females generally accent psychically feminine propensities and *mutatis mutandis* for physical males) provide the raw material for ethical reshaping. We are far from the point where the laws of the ethical order confronting us have been spun wholly from the autonomous personality, leaving no room for discrimination based on stereotyped inferences from physical characteristics.

The fact that the *polis*'s divisions track sexual difference is its undoing. By virtue of this correspondence, the ethical order's dialectical unity of public and private spheres is self-contradictorily exposed by its need for realization to the natural fact that (anomalies aside) individuals are *either* physically male *or* physically female. Whereas conceptually the ethical order's two spheres are mutually complementary and equally essential, for the individuals whose dutiful actions realize the order one sphere will take precedence over the other. The female will privilege the private sphere, the male the public. Indeed, the male will assert the state's *monopoly* of authority, denying the authority of divine law, as Creon does by ordering that Polyneices' corpse be left as carrion, by condemning Antigone for performing her divine-law duty to bury her brother, and (turning divine law upside down) ordering Antigone buried alive. Creon defies the divine law because, whereas the objective ethical order unites public clarity and natural instinct as equal poles of a unity-in-difference, male virtue aims exclusively at the public and clear, showing disdain for the instinctual and dark. While in concept mutually confirming, human law and divine law will in practice be mutually hostile, and this because the *polis* mind, while dialectical in concept, is, contrary to its concept, one-sided.<sup>29</sup> It sits on a found nature it cannot recognize – that its claimed end-status requires it to subdue. But then it must antagonize the very other whose endorsement it requires for legitimacy.

Now, whether objective mind's internal contradiction (dialectical in concept but one-sided in existence) is fatal to the ethical order or generative of an immortal one depends on the status of the individual subject facing the ethical order. If that individual's *insightful* commitment is known to be essential to the natural law's authority, then the separate individual would no longer be equated with the immediate or animal individual. Its separate self would then be rationally necessary to natural law's confirmation as the individual's essential nature. Consequently, the ethical order would really have included its other

and so would be dialectical in fact as well as in principle. Freed from all admixture of immediate nature, the parts of the Whole would be mutually confirming in practice as well as in concept. If, on the other hand, there is no separate, questioning self – if the only mind is the shared one and the given ethical order alone natural law – then the separate individual is just the abstractly immediate bodily organism – the animal; and so the state's universal self is dependent on the support of what it must subjugate in order to realize its priority.

In the “golden age” of the *polis*, before the sophists and Socrates, there is no separate individual mind. Therefore, the customary order is by itself the natural law. So, although natural law is a product of the complementarity of the spheres, the ethical agent assigns itself, according to sex, to one of them, whose law he or she now carries out *against* the other. The male seeks by war to subsume the individual to the state, interpreting demands for the satisfaction of individuality as physical self-indulgence, unmanliness, and cowardice. The female takes up the individual's cause against the state, in whose presumed authority she sees only arbitrary human violence.<sup>30</sup> In both cases, the one-sidedness of the deed transforms the performance of duty into a crime and consciousness of virtue into consciousness of guilt. In opposing divine law, Creon attacks his own law, the legitimacy of which too depends on inscrutability; hence he displays human law as conventional violence. In executing the divine law by means of a human funeral rite, Antigone acknowledges the necessity of the human law she opposes and so comes to see her devotion to divine law as a mere “mindset” or attitude (*Gesinnung*).<sup>31</sup> Since, however, the individual derives worth from actualizing natural law, the latter's collapse is its own.

The collapse of natural law finds expression in the nihilism of the sophists. By asserting the state's force against particularism, the male youth unleashes that very particularism, because he thereby makes an enemy of that which alone could confirm state power as natural authority.<sup>32</sup> That is, he alienates womankind, which scorns the state's pretense of naturalness, thereby changing government's public end into a private end, public service into individual self-aggrandizement, and public property into a “possession and ornament for the Family.”<sup>33</sup>

Its claim to naturalness debunked, the public realm is desired by the male youth no longer for its own sake but solely for private advantage. What is now natural right is not custom but the “power of youth.”<sup>34</sup> Law is a conventional restraint on the right of the strong. Alcibiades, Thrasymachus, and Callicles replace Pericles as the flower of Athenian youth. To suppress the domestic free-for-all, the state embarks on foreign wars, but here too effects the opposite of what it intends. In war, the *polis* depends for its survival on the strong and asserts externally the very principle it wished to suppress at home: that right issues from force. “Because,” says Hegel, “the existence of the ethical substance thus rests on physical strength and fortune, it is already settled that it has been overthrown.”<sup>35</sup>

#### 2.4 *The Republic as an Interpretation of Greek Life*

With Hegel's analysis of the *polis*' decline as background, we can understand his saying (in the preface to the *Philosophy of Right*) that Plato's ideal republic is no utopian dream but "an interpretation of the nature of Greek life."<sup>36</sup> At first blush, that judgment is surprising, given the radically counterfactual character of Plato's model state. Where in Greek life were military guardianship and ruling open to women and men equally, did men and women belong to each other in common, were parents and their offspring unknown to each other, were philosophers kings? In the light, however, of the *polis*' tragic flaw and resultant collapse, Hegel's judgment appears astute. Let us for a moment consider the *Republic* in that light.

Like old Cephalus who personifies it, the *polis* in which inscrutable custom bears the authority of nature belongs to the past. It takes no part in the *Republic*'s conversation about justice. Among the youth, law is artifice, and natural right sides with the rapaciousness that law restrains. As the common mind's authority becomes violence against nature, the separate individual mind dawns as a new locus of right-claims, threatening anarchy with the sophists and subversion of the *polis*' mythic foundations with the questioning Socrates. Against Thrasymachus' claim that superior force makes right, the conservative Plato seeks to restore the natural teleology of the *polis* and the basis in nature for political virtue but now subordinated to the final end of philosophic insight into the good. His apology for Socrates consists in sublimating the new principle of subjective mind in philosophic longing, for the sake of which a new rationally justified *polis* is to exist.

From that *polis* Plato expels everything that brought the historical *polis* to ruin. The physical distinction between male and female no longer determines their roles in the city. Public service is open to all who are qualified, and men and women receive the same training for it. Since public service is for the Greeks a masculine excellence, this effectively means that among the citizenry the feminine is abolished. The family too is abolished for citizens. Sex is free, and no one knows who his or her children or parents are. Thus, the instinctual law against incest – even unwitting incest – is guiltlessly flouted; guiltlessly, because the only divinity now is abstract mind. There are no private households or private property. Eliminated, therefore, is the distinction between public and private that, fatefully, made the state's demand for civic virtue depend for its legitimacy on the partial virtue among family members it had also to compete with and destroy. The private sphere is abolished for citizens; it is the exclusive domain of the class whose work satisfies physical needs and supports the leisure of the political class. Also eliminated is the association of the gods with the intelligent and instinctual *sides* of the historical *polis* – that is, with partiality and finitude. There is to be no speech depicting gods as having human weaknesses and none representing Hades as a place for gibbering shadows. Instead, the gods are to be representations of transcendent forms, and what was formerly divine law enjoining respect for the brute individual is law no more.<sup>37</sup>

In sum, Plato's model *polis* is the historical *polis* extricated root and branch from dependence on immediate nature and dark superstition. It is a city in which objective mind's primacy is radicalized – pushed to its extreme conclusion; but this is now accomplished without guilt, for immediate nature no longer holds objective mind hostage to its demand for equal consideration. From a principle equivocally coordinate with mind, immediate nature becomes unequivocally subordinate, as those who tend to the body are unilaterally servient to those devoted to political work. Thus, mind is to be freed from dependence on not-mind for confirmation of its natural authority; its sole confirmation will be the philosopher's insightful devotion to his good.

However, Plato's re-legitimated *polis* is no less conceptually unstable than the historical one was. The reservation of the private sphere to non-citizen servants and its abolition for master-citizens assumes an equation of the separate individual with the animal individual – a holdover from the customary *polis*. Yet that equation is equivocated. While affirmed in the subordination of the economic class, it is denied by the role the *Republic* assigns to separate selfhood in the shape of the questioning Socrates and the erotic yearning for the good of Plato. But if there is a sense of separateness from the *polis* that is not animal, why must the private realm be the preserve of those fit only for subjection? Why can it not be a sphere for separate *persons* who have demonstrated their independence of nature's ends?

Nor is this the only source of instability. Restricting the right of the separate mind to philosophers stands in tension with Plato's detaching mind from its erstwhile dependence on brute nature. To free mind from nature is to abolish the hierarchy between non-philosophic subjects and philosopher-rulers, for it cannot be the case that the subjective mind's right is hostage to exceptional endowments of the brain. Not everyone can be a philosopher, but everyone can be a person. Nor can inequality be sold to unquestioning minds by a myth of origins (in which the *polis*'s class strata erupt from the earth) not unlike those on which the customary cities relied; for, like Cephalus, those cities have departed in favor of critical minds. The days of unquestioning acceptance of myth are over.

So Hegel is right to relativize the *Republic* to Greek life, and he is right to say that it was a doomed attempt artificially to limit the emergent principle of free personality within bounds compatible with the preservation of that life. The *Republic* is a paradigm of Hegel's two-bird image of philosophy. On the one hand, it is an owl of Minerva that grasps the nature of Greek life only when it has already become moribund; but, on the other, it is the rooster that announces the dawn of a political life ordered to the separate person.

### 3 Personality and Roman Self-Estrangement

Ethical action brought down the customary order as a natural law. The outward "peace and beauty" of that order concealed a fatal flaw: it was at once

the “unconscious peace of nature and the self-conscious restlessness of mind.”<sup>38</sup> Conceived as the individual’s essential nature, the *polis* nonetheless turned conventional, because it depended for confirmation of its authority on the free recognition of the natural individual it had to subdue. Let us now try to understand the necessity by which a new conception of humanity’s essential nature arises.

### 3.1 *The Person as the Fallen Student of the Polis*

At the outset of Greek history, the paradigmatic soul was a sphinx – a human animal whose intelligence had awoken from immersion in the biosphere but had not yet intentionally reduced the biosphere to an embodiment of its self-originated ends. This is no longer the case. As someone who has acted ethically, the exemplary human being has renounced a life of need satisfaction for that of active citizenship and has risked his life for the city in war. To his cultivated mind, the human animals of Egypt and Persia are inferior peoples – barbarians. Having failed, however, to find his essential worth in a *polis* turned conventional, the individual now retreats from the collective self of the *polis* into his own self. Since, moreover, the *polis* collapsed because of its customary basis and dependence on nature, the self into which the individual retreats is the sheer negative of everything given, natural, particular, and contingent. It is the self as capacity for free choice and nothing more. Empty and formal, this universal is the “frightful destiny” in which the Greek city-states must perish, for each is a particular traditional order entangled with nature.<sup>39</sup> So the conception of humanity’s essential nature moves like a torch from the embodied self of the ethical order to the disembodied self of the individual – a self formed just through intentional ethical action in the *polis*. The abstract ego that now claims to be the end of nature is the graduate of the process of culture and education that the *polis* was. The destiny that consumes the Greek city-states is their own offspring and pupil – the individual person.<sup>40</sup>

It is of course the Romans who take up the torch. They, however, do not know what Hegel knows. Whereas for the philosopher of history, the person is derivative, second, and an historical product, for the Romans it is first, timeless, and the absolute end of every unfree thing in the world. By beginning from the *polis*, Hegel can see that the individual person is not the fundamental end of everything – not self-sufficiently a final end prior to the state. Rather, it fell *from* an inadequate state. The *polis* contained the contradiction that it was dialectical in concept but one-sided in existence. Its existence was thus inadequate to its nature. But the self-inadequacy of the *polis* means that its dialectical (unity-in-difference) structure *lacks* confirmation as the law of reality from that which is other than it – namely, separate individual selfhood; and separate individual selfhood obtains objective value by the *polis*’ lacking it. Accordingly, the separate ego’s worth lies in relationship to a political community; and so, inherently, the isolated ego in turn lacks a political community as the ground of its objective worth. But mutual lack creates a primordial energy

or attractive force between the *polis* and isolated selfhood – an attractive force Hegel calls Spirit and of which the Roman is unaware. Why unaware? The reason is this: the one-sidedly objective ethical order has collapsed as the locus of natural law, and the separate individual enfranchised by that negation has, *qua* person, taken its place. So the Roman person does not know itself as *dis*-embedded from a *polis* still logically in the background. Rather, it thinks of itself as not embedded, period. Neither, therefore, does it know itself as one person of a bi-personal connection. It regards itself as the fundamental end of the world.

The realization (once the historical conditions are ripe for it) of the primordial connection between the ancient *polis* and the separate person is Hegel's final state. That this state develops organically from the embryo of the Greek state entails that Hegel's final state will not be a Prussian, Napoleonic, or even ideal type of the modern state. Rather, it will be a synthesis of Greek and modern states – one that is neither Greek nor modern. Nor will it be a universal and homogeneous state that completes a development from pagan masters and slaves to the recognized equality of determinate persons as ends.<sup>41</sup> That is not the story. Rather, Hegel's final state will be the *polis* of civic virtue inwardly developed so as to include (and replace custom with) all the examples of mutual recognition (unity-in-otherness) produced by the separate person as it strives to realize outwardly the end-status it claims inwardly. As we'll now see, one such example is Roman private law.

The person's claim to be a self-sufficient end precludes the complementarity of state and individual that characterized the Greek ethical order. Still distant, therefore, is the time when a philosopher could grasp the inherent connection between the self of a people and the separate self of the particular individual; for these extremes are, as a matter of historical fact, rigidly antithetical. Because the most advanced political civilization in the world denigrated the separate individual (identifying it with animality), the separate individual must claim worth apart from political association – as an isolated individual. Formerly the unreal shadow of the citizen turned toward the sunlight of the city's intelligence, the isolated individual is now certain of its dignity as a free will capable of detaching itself from any and every appetite belonging to animal life. In Greece, the individual's dignity lay in belonging to family and city; in Rome, it lies in its legal status (*Rechtzustand*) – in its capacity *qua* free will for rights. But the moral self-sufficiency of isolated free wills precludes the teleological necessity of a relationship between them or to a common authority over them; and so the ego who claims to be a self-sufficient end is self-interested and indifferent to others. Once the individual's moral end, the state now becomes the "spiritless community" that hovers over its egocentric subjects as an external and hostile power.<sup>42</sup>

Let us now see whether the individual ego's claim to be self-sufficiently a final end stands up when given objective reality.



### 3.2 *The Imperial Person, Acquisition, and Slavery*

The first step to realizing this claim is the Stoic's detachment from objects of bodily appetite, for in dependence on such things, the self is servant to nature's ends. By this self-transcendence the human animal becomes a person. Were it to persist in this indifference toward objects, however, the individual's existence would contradict its essential nature as now conceived; for its conviction of being, *qua* person, the final end of things, would be challenged by the independent existence of objects in the external world. The person cannot be the absolute end it claims to be if it is an absolute end only in its own mind. Accordingly, to remove this self-contradiction and gain proof of its conviction, the person must become a practical skeptic. It must demonstrate by action that the independence of external objects is only apparent – that unfree things are not ends but only means for the person, that their only reality is an instrumental one. And this the person does by taking objects into possession and using them.

In Greek life, acquisition was for the sake of the body – of animal life. So directed, it had principled limits. Since life was to be preserved for the sake of the good life in service to the *polis*, acquisition was ethically limited to what was needed for life, avoidance of wrongdoing, and sacrifice to the gods. Cephalus' speech in answer to Socrates' query about the chief benefit he derived from his wealth illustrates the customary Greek norm with respect to acquisition.<sup>43</sup> Moreover, since acquisition for the body was justified only insofar as it supported leisure for citizenship, it was reserved for a class of people deemed unequipped for political work and whose role was to support the leisure of a political class. Acquisition for the needs of animal life was the work of people who, lacking the potential for the human animal's specific excellence, were merely human animals.

In Rome all this changes. Acquisition is now for the sake of an intellectually generated end – the person's self-validation as the final end of unfree things. So directed, acquisition has no principled limit. Its only limit is the physically possible. World dominion is the goal, and Rome's model human being aims at it. Correspondingly, the point of slavery also changes. The slave is not someone unfit by natural equipment for the active citizenship that defines the human. He is someone who, in battle for dominion, preferred his accidental but determinate life to the detachment from life by which the human being supposedly rises to its essential nature as a generic person. With the new cause of slavishness goes a new role for the slave. His role is not to support the leisure of a political class but to mediate between the master and nature so as to make possible the master's conquest of nature. The barbarian slave dealt with matters of the body to free the Greek for politics. The Roman slave struggles against nature's indifferent externality so that his master can simply enjoy the delivering up to him of nature's fruits. Acquisition is now assigned to an underclass not because it is an activity unfit for the best sort of human being; on the contrary, it is now the

specific vocation of the person. Rather, what is incompatible with independent personhood is just direct contact with nature.

Reconceiving slavery as the Romans do opens a road to equality. Someone congenitally unequipped for the particular way of life supposedly definitive of the human essence will never become fit; there is a natural obstacle. But someone who shrank from a fight to the death because the prize – the void of selfhood – offered nothing to the determinate individual can achieve independence by another route. He can more sanely become a person through work that renounces immediate bodily gratification for an intellectual end than by risking his life just for the sake of showing indifference to it. The Roman slave accomplishes this by toiling for the sake of his master's independence – an end he internalized by his trembling awe at the master's indifference to contingent life.<sup>44</sup> The cobbler achieves it by forgoing the immediate satisfaction of his natural needs for the sake of luxuries posited by the mind and obtainable only by a division of labor. So does the contracting party who, by a promise, renounces all momentary advantages for the sake of mastering the future. So, finally, does the merchant capitalist who risks his sustenance for the sake of accumulating the token of exchange value. There is a low bar to being a person, as there must be for private rights to exist. For, as we'll now see, only among recognizing equals can there be rights.

### 3.3 *The Downfall of the Imperial Person*

The person proves its end-status vis-à-vis things by having its slave acquire them and prepare them for its use. Because first possession realizes the person's end-status with respect to the thing possessed, it confers a right to exclude others and a right to recover possession from a usurper. It does not, however, confer an absolute right against all. Because using is better than possessing at realizing a person's end-status vis-à-vis a thing, squatters who use land get to oust the right of non-using possessors after a period of time. And so says Roman law. However, we saw in Chapter 2 that unilateral use too fails to produce an absolute property because (*inter alia*) of the inherent competition for acquisition among (here) megalomaniacal persons each of whom claims lordship over everything in nature. Since unilateral acquisition frustrates the self-validation projects of others, they cannot consistently with their end-status recognize it; hence the user is left with a subjective claim against which the thing's independence still stands. Only in market exchange, we saw, is *de facto* acquisition converted into rightful property; for only there can all persons recognize each other's ownership compatibly with their right of infinite accumulation. Paradoxically, the objective reality of the person's claim to self-sufficient end-status is a Roman world of property and contractual relations evincing the structure of mutual recognition.

However, this world negates rather than realizes the person as a fundamental end. This is so because, in retreating into itself for independence, the person left the social world to the chaotic forces unleashed by the Roman apotheosis of the

person. “[E]lemental beings,” these forces “break out into wild excess . . . falling on one another in a frenzy of destruction.”<sup>45</sup> It is a world, after all, in which the model human being is a would-be lord of everything. But this is just the world to which the person, driven by an intellectual necessity to own things, exposed itself in order to gain validation for its ownership. To acquire recognition of property, it alienated the means of self-confirmation to another. But it thereby made itself dependent on the free choice of someone who claims to be an absolute end, free to do as he pleases, to respect property or not, to honor his contracts or to breach them. Everything being permitted to absolute ends, no one can wrong another, and all are right-less. A final end in his own estimation, the person is “in his reality a fortuitous existent . . . an insubstantial movement and activity that comes to no durable being.”<sup>46</sup>

However, his subjection to the “chaotic tumult” of society is not the final degradation of the Roman. To this point, his legal status – his formal capacity for rights – is intact even if the formal capacity is contradicted in reality. In the next step, even the formal capacity is lost. The illusoriness of rights in an exchange society populated by competing final ends teaches that he alone is master of the world to whom everyone else has surrendered his claim to fundamental end-status, hence also his capacity for rights. Such a paragon would be the “absolute . . . person” or “living god” in relation to whom everyone else would be a non-person.<sup>47</sup> Moreover, the unreality of rights in a society without a master to control the chaos teaches the necessity for constituting one. So everyone now relinquishes his claim of end-status to an Emperor who by that transfer has unconstrained authority to enforce (or not) everyone’s private “rights” with respect to each other as well as unlimited authority to do with his subjects what he wills.

This, then, is the outcome of the Roman project to prove the fundamental end-status of the individual person. The objective realization of the person’s claim to world-mastery is “reality estranged from it” – a juristically uncontrollable imperial power that, instead of actualizing the rights of persons, annuls them.<sup>48</sup> Would-be lords of the world have all become voluntary slaves to one such lord, whom they worship as their own ego-ideal. Awareness of this self-contradictory result produces an “unhappy consciousness” that oscillates without rest between a conviction of its final worth as an abstract ego and a sense of its nothingness as a determinate individual.<sup>49</sup>

#### 4 Estranged Spirit and the Inversion of Values

However, Roman unhappiness is now potentially overcome. This is so not only in a primordial sense but in a historical one as well. The Roman world is an estranged world, but it does not lie inertly alien and external to the person. Rather, it is that person *self*-alienated and *self*-externalized. Not (as Greece was) a customary order that the individual finds, Rome is the self’s own “work.”<sup>50</sup> It is a work not in the sense (satisfied by the *polis*) of a consciously reproduced

custom but in the sense of a realized human project. The Roman aim was to give outward proof of the person's final end-status, and the Roman Empire is the outcome. It is, to be sure, an outcome that contradicts the aim, but it is an outcome nonetheless. More specifically, it is the product of a twofold alienation. First, the person alienated his *de facto* possessions in return for social confirmation of its ownership. The result is a Roman law that gives practical force to the person's end-status vis-à-vis things insofar as this is partially realized in possession (*possessio*) and use (*usucaptio*) and adequately realized in the contractual exchange (*commutatio*) of equal monetary values. Second, Romans relinquished their claims of final end-status to a person, who was now the *sole* person, in return for the actualization of their private rights. The result is a relation between one master and a multitude of slaves wherein there are no longer right-bearers and so no private rights to enforce.

In Greece, self-alienation in return for expected confirmation did not occur. The individual did not need to make himself dependent on an alien and indifferent other for the confirmation of his worth because he claimed no worth in isolation from others. His worth lay in membership in a civic body whose mind he shared. When, however, the individual claimed final worth as an isolated ego alongside others, confirmation of the claim had to come from egos external and indifferent to him. Self-realization had to be sought by a process of self-alienation. Of course, this process produced an outcome opposite to the one intended. Instead of actualizing the private rights of all persons, it produced the rule of an unrivalled person whose free will was on that account absolute. But because the absolute person obtained valid authority only through the isolated person's relinquishing to him – for the sake of its rights – his egocentric claim of final worth, that action cannot be excluded from a conception of the absolute end. Rather, the Absolute must be understood as incorporating that process, hence as the coming-to-be out of separation and agony of a bi-personal relation of mutual recognition; and it is so understood by Christians. Accordingly, what Rome brought together in practice Christianity now unites in essence. Grasped in thought, the mutual recognition of a universal and a particular person is Spirit, which now supplants the isolated person as the fundamental end of the world.

#### 4.1 *The Two Worlds*

Nevertheless, the ripeness of the time for Spirit is not yet its ripeness for the philosopher's knowledge of Spirit nor for Spirit's self-knowledge through philosophy. What is now held to be the fundamental end is a Spirit divorced from the historical process through which it came to sight and externally given to the understanding and agency of the human individual. It is for this ahistorical and revealed Spirit that conditions are alone ripe. This is so because, in contemplating the preceding course of Greek and Roman history, the thinker could conceive a new basis for individual worth only by distilling the essential from the accidental aspects of that history. The loss of the beautiful but

ignorance-based harmony of self-consciousness and nature through the rationally inevitable dawning of critical inquiry; the separate person's fall from the *polis*' truncated unity-in-difference of the universal and the particular; the normative vulnerability of imperial persons in the exchange relations they form for the validation of their worth-claims; and the restoration of the whole through the imperial person's submission to a ruler of the world who guarantees its private rights – such is the inward and rational history of Spirit. The fact that in Rome the person's submission to the ruler of the world meant its self-loss to a despot and that its conviction of worth thus came to nothing – these are features of a “present” reality from which the unity of Spirit is absent.

Accordingly, the world now imbued with the consciousness of Spirit “breaks up into two [worlds].”<sup>51</sup> One is the world here and now, the other a world in the hereafter. One is secular and profane, the other non-worldly and holy. The relationship between these worlds varies according to whether the new conception of humanity's essential nature supervenes on an already existing world-formation or itself forms a world. To the Christian in the profane Roman Empire, the two worlds run parallel. The present world is autonomously ordered to the imperial person and justifiably ruled by an unlimited despot as the natural consequence of pride; the world beyond is governed by Spirit, which leaves secular authority independent and untrammelled, eventually to perish, for its principle has been surpassed. To the Christian in the Holy Roman Empire, by contrast, Spirit is the principle of both worlds. Their division now corresponds to a distinction between, on the one hand, a state enforcing a disciplinary natural law known to reason and bending the prideful person to political virtue and, on the other hand, a state reflecting a non-repressive supernatural law given by revelation and enabling the mutual love of universal and particular persons. The disciplinary state is now preparatory for, and so inherently subordinate to, the state united by love. But because pride is considered a fixed condition of this life, the non-repressive order belongs to an afterlife.

However, Hegel sees the relation between the two worlds rather differently. In the Holy Roman Empire, state and person stand in hostile opposition. Their fundamental ends – the common good of human natures and the particular interests of separate egos – are mutually antithetical. At the root of this conflict lies the *historical circumstance* that the socio-political world confronting consciousness, though for Hegel a product of the person, is a world the person does not recognize as its product. It is an estranged world in which the person lost itself. To this person, therefore, the world appears not as its work, but as an alien reality indifferent to its worth. And because the world appears alien and indifferent to the person, the person is correlatively detached from the world. This position of social and political detachment the person takes for its natural and fixed condition. For Hegel, detachment is historically relative (the Greek did not view himself thus), but for the person he is observing, it is the human condition. Throughout the period now commencing, therefore, the person continues to take its stand as an isolated person alongside others,

as one whose claim to final end-status must therefore be a competitive claim to *exclusive* end-status. So whereas the Christian thinks that he is an imperial person by corrupt nature, Hegel sees him as such by a historically conditioned necessity.

Though considering itself fixed in its detachment, however, the person has ceased to take seriously its self-sufficiency as a final end. Having learned the hard lesson of Rome and as one now imbued with the consciousness of Spirit, the Christian views its isolated condition as rather a privation – as an existence inadequate to its essential nature, which it takes to lie proximately in disinterested service to the common good, ultimately in the reconciliation of its particular person with the universal person in Spirit. So, rather than seek confirmation (as the Roman did) through the direct acquisition of property, the person will do so now proximately through the reception of political honor, finally through the grant of eternal life; and it will receive its holdings from the worldly head of state in return for service. This is why Hegel calls the historical era to follow a process of “culture” (*Bildung*) or of self-formation. The model person of this era will put aside its immediate, isolated existence, renounce the direct conquest of externality, and seek its substantial worth in political and religious service. It will lose itself in both places. But in losing itself, it will create the historical conditions for the imperial person’s development into the self-ruling citizen.

Despite, however, the pattern of self-renouncing actions belying its belief, the model person of this era regards its detachment from the socio-political world as its fixed condition. Hence it identifies determinate personhood and its particular aims with isolated personhood and its domineering and avaricious aims. It must therefore conceive political unity as an abstract union of identical egos exclusive of respect for determinate individuality as such – as a union in which the individual is present only as a generic rational nature. It must, in other words, construct its essential nature as something external to, and so estranged from, the determinate individual whose nature it is. But this means that political virtue must equate to self-erasing devotion to the common good, and respect for self must equate to rebellion and vice. To fulfill one’s human nature is to lose oneself in the state; to find oneself in the state is to corrupt the state into a means for self-aggrandizement. In this period, attaining the common good and satisfying the determinate individual are mutually exclusive options.

For Hegel, who has watched this antithesis develop from the person’s conceptual fall from the *polis*, the opposition of universal and particular falls within a latent whole. The mutual hostility of universal and individual ends is Spirit’s *self*-estrangement – its internal splitting and self-loss *qua* whole. In a primordial sense, therefore, the antithesis is potentially overcome, the bifurcation of the psyche potentially healed. But because no *historical* potential exists for reconciling the opposites in the medieval world, the time is hardly ripe for grasping Spirit’s wholeness in conceptual terms as a this-worldly reality. Rather, the reconciliation of the extremes must be pictured as a utopia beyond this world – as an object, consequently, only of faith and hope.

But the utopia must be projected not only beyond the *medieval* world. Because the person's detached state is viewed as a fixed condition of worldly existence as such (not a necessity relative to the existing world's indifference to the self), so too is the antithesis between universal and particular ends that hinges on the equation of particular ends with the imperialist aims of the isolated person. And because the antithesis of universal and particular ends is viewed as a constant of *the* world, their complementarity must be pictured as a reality beyond any possible world and so too beyond human understanding and agency.

Accordingly, it is not just the *worldly* state that repels the determinate individual; the utopian state in which the determinate individual *will be* reconciled to the universal repels him as well. It too is an essential nature estranged from the individual whose nature it purports to be. So, the determinate individual whom the universal person accepts is *not* the determinate individual who belongs to the world. He is a separate individual with a body, mind, and name of his own. Nonetheless he is now regarded as the worldly individual's potential nature and final end, one whom the worldly individual must become or imitate – indeed, one with whose body and blood it must merge. But becoming a determinate individual who is not oneself entails erasure of self – of both body and mind – the opposite of self-realization. Given the equation of the determinate person with the isolated, imperial person, becoming the individual belonging to Spirit requires ridding oneself of one's determinate personhood. So, by fasting and celibacy the model Christian of the period treats his body as non-existent. By giving up work and property he treats his person as non-existent. By praying in a language he doesn't understand and reciting catechisms by rote, he treats his mind as non-existent. Finally, he alienates even his free will to a priest who decides what he shall do for penance. Having reduced himself to a non-person in this life, he awaits his dignity in the next.

Accordingly, in both regions of the Holy Roman Empire, the individual's essential nature is estranged from it such that self-realization entails self-loss. Mediated by a priestly hierarchy, the faith-based relationship to revealed Spirit is just as self-abasing as the reason-based one to the state. But whereas the Christian views the holy life directed to the otherworldly state as teleologically ultimate and political life in the worldly state as subordinate to it, Hegel famously inverts the order. Self-estrangement in the church is a reflex of self-estrangement in the state. It is because a historically conditioned antithesis between universal and particular ends is mistaken for a fixed antithesis that the reconciliation of the extremes is projected away from the world where human beings think and act. Faith in a revealed truth is epiphenomenal. Here Hegel walks on his feet.

However, a caveat is required. It would be a mistake to read Hegel's analysis of medieval faith in a Feuerbachian or Marxian way. That is, we must not read Hegel as saying that theism as such is a product of the historically relative conditions of bifurcation in political life, hence destined to wither away

once those conditions are overcome.<sup>52</sup> Whereas Feuerbach and Marx go all the way from a rejection of human self-estrangement in faith-based theism to atheistic humanism, Hegel stops at the mean: a free theism open to insight that is at once philosophical and religious. That is why he distinguishes between faith (*Glaube*) and religion (*Religion*).<sup>53</sup> Faith in an otherworldly dignity for the determinate individual that surpasses understanding is indeed a reflex from the historical unavailability of dignity in this world. But faith is only one form of religion, by which Hegel understands the self-awareness of divine Spirit as the fundamental reality in a holy community ordered to it. As the perfection of that self-awareness in self-knowledge, Hegel's philosophy is (or claims to be) as much the perfection of religion as it is the perfection of philosophy. It is the wisdom where faith and love of wisdom meet. In the sense spelled out in Chapter 1, Spirit is a divinity amenable to the insight that submits to and follows its own internal logic of self-becoming. As an unbounded, bi-personal Whole, it is distinguished from finite humanity without being distant from and exclusive of humanity – a sense of transcendence that Christianity itself proclaims but then once more projects away.

Accordingly, while faith in revelation is historically conditioned for Hegel, the content of the revelation is not. Contrary to the myth propagated by Alexandre Kojève and perpetuated by such interpreters as Strauss, Bloom, Pippin, Pinkard, and Houlgate, there is no denial of transcendence in Hegel; on the contrary, there is an affirmation of genuine transcendence.

#### 4.2 *The Anatomy of Estrangement*

Before describing the process through which this period's model person actualizes itself in this world, Hegel dissects the structural features of the environment in which this action occurs. When the Greek *polis* was under consideration, a similar analysis revealed the structural interpenetration of public and private spheres such that each implicitly presupposed and completed the other. The overall picture was one of architectural beauty and harmony. Here, by contrast, the analysis will reveal the anatomy of estrangement. In this context, the term "estrangement" refers to a situation where the individual's essential nature is conceived as a way of life conceptually exclusive of, hence external and hostile to, his determinate person such that in fulfilling his supposed nature, he either loses himself or corrupts the essence. In the Holy Roman Empire, as Hegel puts it, "nothing has a spirit grounded and immanent within it; rather everything is outside itself in what is alien to it."<sup>54</sup> Let us follow Hegel's analysis.

Considered as a determinate person, the individual stands detached from a world apparently self-complete and indifferent to his existence. But raising himself in thought above his accidental existence, the individual is a thinking or "pure" consciousness in virtue of which he is identical with all other thinking beings. This species consciousness he now takes to be the universal essence of human animals – their essential nature. For the pure consciousness, then, the essential nature is an identity of each with all, hence a unity of universal



and particular selfhood. But this identity abstracts from the individual's difference, so that he is present in it only as dissolved in the genus – only as a being who thinks and has speech to articulate his thoughts. Pure consciousness privileges this identity, calling it “the good,” because it expects to find therein its objective worth and essential reality. By contrast, it characterizes the individual's difference or his independent existence for himself as “the bad” because it views this as a “state of nothingness.” As we saw, the cause of this harsh dichotomy between the identity of universal and particular egos and their difference is the historical circumstance that the objective world in the aftermath of Rome appears externally given and indifferent to the determinate individual, who is therefore equated with the detached, hence brute or immediate individual. Thus the baby of the determinate individual is thrown from the essential reality along with the bathwater of the brute individual.

Not only that. Because the individual's detachment from the world is considered its fixed condition, the mind that apprehends the natures called good and bad is identified with the subjective mind of the isolated individual. Consequently, the objective reality of those natures depends on their having an autonomous existence apart from mind as such. Although identity and difference are nothing but ideas – products of thought – they nonetheless assume estranged or reified forms as objects in the external world, much like the sun and the moon. So the goodness of identity has a thought-independent existence as “state power,” while the badness of difference is reified as wealth. In Greece, public and private spheres of the *polis* were likewise external objects for the individual, but they were not external objects for mind; they were divisions of mind. Here they stand outside mind. So, the state, though the idea of unity and “the achievement of everyone,” is nonetheless considered a natural object. It is the “substance” in selfless devotion to which individuals supposedly discover their true selves, in which the individual's particularity is “merely a consciousness of its universality.”<sup>55</sup> Wealth too is considered a substance. It is identified with money, the preoccupation with which yields a satisfaction considered selfish. According to this division of the world, then, the political sphere abstracted from the wealth-producing sphere embodies the identity of universal and particular interests, while the economic sphere embodies their difference. We'll see that this is the way medieval feudalism divides the present world.

However, the economic sphere can provide the same division by itself. Economic activity is inherently not selfish. Given a division of labor, the individual cannot produce wealth for himself without creating it for others as well. So, as Hegel says (echoing Smith), the pursuit of a selfish material interest “is merely something intended which cannot ... make actual what it intends, namely, to do something that does not further the good of all.”<sup>56</sup> Understood as furthering a public interest, the economy can be regarded as a political economy, the state as a “commonwealth,” and wealth as the “wealth of nations.” On this view of the matter, the state understood as a macro-household whose task is to increase and manage the national wealth embodies the identity of particular

and universal interests, while the self-interested pursuit of wealth by atomistic and mutually indifferent individuals embodies difference. We'll see that early modern monarchical absolutism divides the present world in this way.

Having considered the individual and the objective world in their mutual detachment, Hegel now examines their relationship and interaction. The reason why a relation exists at all is that the individual's isolated existence contradicts his essential nature as he now conceives it. Implicitly or potentially, he possesses a recognized worth and reality in union with the universal; outside that union, he considers himself a non-entity. Thus, the individual's action will consist in actualizing his subjective conviction of worth, and he will do this by cancelling his isolated condition and relating himself to the objective world.

The theme of the narrative to come is self-cultivation and self-change through disillusionment with false human ideals. Whereas for Spirit, history is its self-confirmation and self-knowledge as natural law, for the finite ego whose travails Spirit (through Hegel) understands, history is education. The individual ego learns what its essential nature is through a series of *aporias* wherein it comes to grief in actualizing unnatural conceptions of its essential nature. It begins this period as an imperial person whose ideal essence lies outside it. It will end as a species ego that gives universal law to itself.

The individual ego's first relation to the world consists in the simple act of judging the spheres of the external world as either good or bad according to the ego's conceptions of what the good and bad are. As we saw, the good is the identity of universal and particular egos, the bad their difference. So, the individual ego might call "good" the state authority either abstracted from the wealth-producing sphere or identified with it; and correspondingly, it might judge wealth bad either *per se* or as acquired outside public service – that is, in the market. In what it values positively the individual ego expects to find its particular consciousness merged with the universal and therein accorded dignity; in what it judges negatively it expects to find its own nothingness.

Now we can see that, because the individual ego's essential nature is conceived by abstraction from its distinctive or determinate ego, the possibility of its special dignity's being confirmed in *this* world does not exist. It does not even exist in the holy life in the church, the point of which, Hegel showed, is precisely to annihilate the determinate ego for the sake of identification with a divine individual who is *not* oneself. Confirmation is rather a hope for the next life. In that sense all spheres (holy, public, private) of the objective world, no matter how filled in, are "bad." This judgment simply reflects the fact that the world between the fall of Rome and the dawn of Enlightenment is shot through with estranged human ideals – ideals hostile to, and destructive of, the individual whose perfection they purport to be. The causation chain, once again, is this. Because the Roman world appeared alien to the self, the determinate individual was the detached or isolated individual; because the detached individual is the brute (immediate) individual, the determinate individual is the brute individual; and because the brute individual is the detritus of any conception of essential

being, the determinate individual is likewise detritus. Thus, there is no good to be found anywhere in this life for the determinate individual.

Accordingly, the fact that the time is ripe for the apprehension of Spirit as the reconciliation of universal and particular egos but is not yet ripe for Spirit's worldly realization in a holy *political* community creates logical room for a negative valuation of the world as such. In the present context, that is a reasonable judgment. But this opening in turn yields the possibility for not one but two character types of the Holy Roman Empire – types distinguished by their ways of judging and relating to the world. The character called noble is ready to renounce direct acquisition for service to the state, believing he will find his dignity in political honor and aristocratic distinction. In the feudal era he is the vassal, in the era of monarchical absolutism, the courtier. The other character is called base or ignoble, because, seeing no good in human ideals anywhere, he prefers immersion in his private interests to service for the state, however defined. In the feudal era he is the serf, in the absolutist era, the *bourgeois*. The table below shows how the world divisions and character types are respectively filled in by the two eras.

	Feudalism	Absolutism
Identity (good)	Pure state	Commonwealth
Difference (bad)	Wealth	Market
Nobility	Vassal	Courtier
Baseness	Serf	<i>Bourgeois</i>

Since the authority of both feudal and absolutist states will gain effective realization through the noble's recognition and service, it is he who, through his self-transcendence, makes the history of pre-Enlightenment Europe. The base character is important merely as a foil by which to measure the distinction of nobility. Whether as serf or as *bourgeois*, he sees in state service only his effacement or humiliation, judges no ideal worthy of sacrifice, and so clings to a natural immediacy he despises as well. As we'll see, however, it is the base character who, during this period, may claim the deeper wisdom.

4.3 The Discipline of Culture

If the individual's first connection to the world was through judgment, the second is through action. The nobleman's action consists in renouncing the aim of a direct dominion over nature for service to the common good's representative. This service brings the common good and the individual into a connection whereby the realization of each is mediated by the recognition of the other. The common good's authority is realized through the nobleman's acceptance of it; the nobleman's dignity is realized through the public authority's recognition of his distinction. Thus the union is as much the realization of the supposed

rational essence as of the individual ego. We must now determine whether, in each of the two (feudal and absolutist) contexts defined by the ego's value judgments, the realization of the essential nature truly realizes it or negates it *qua* essential nature.

Observe that for all the conceptions of the essential nature other than Hegel's, the process of its realization is external to the conception, which is viewed as self-complete in its unrealized conceptual form. This is the key to their downfall, for realization (which is inherently necessary to the essential nature as a natural *law*) must then bring the essential nature into contact with something its essence excluded. In the case of Spirit, by contrast, the process of its realization is internal to it. Indeed, as the unity of the Notion and its realization in and through another ego, it *is* its process of realization. As a consequence, realization can be a true realization and not a self-contradictory one.

The general form of the connection forged between the state and the nobleman will be "performative speech" – speech that (as in "I accept your offer") is a kind of action in that it creates a new state of affairs rather than describing an existing one.<sup>57</sup> For Hegel, the perfect bond between state and individual is rational constitutional law, which defines the duties of respect and concern owed the determinate individual by the state as the condition for the individual's recognition of the state coming from an autonomous subject capable of validating its authority. At this point, no prospect for such a bond exists, because the universal nature precisely excludes respect and concern for the determinate individual. It hates the determinate individual. Given this hostility, the one bond possible between state and individual is performative speech wherein the individual is present only as a generic language speaker. In deferring to its speech-acts ("by and with the advice and consent of the lords spiritual and temporal"), the state recognizes the individual only as a human nature distinguished from other natures by language. For its part, the individual commits only that part of himself – the "pure" or generic part – that is received back with honor. His determinate self remains uncommitted.

Accordingly, because it winnows identity from difference, speech and speech alone connects state and individual in the pre-Enlightenment era. We might say that the constitutions of this era exist only in speech. Each constitution is distinguished by a specific form of speech (counsel, flattery), one determined in each case by the nobleman's judgment of wealth. In the forms of speech the supposed natural law gains its realization, and it is with respect to each form that we must inquire whether realization realizes or negates.

To begin with, the nobleman judges positively the political sphere abstracted from the economic and negatively wealth and self-interest *per se*. Thus he disdains direct acquisition, leaving this to his serfs, and commits himself to universal affairs. Yet he does not do so unreservedly. In the state elevated above wealth acquisition, the nobleman sees only his generic humanity valued, not his specific person. As a consequence, he becomes the "haughty vassal" who,

though venerating the common good in thought and speech, and though proclaiming his readiness in principle to die for it, nevertheless reserves the liberty to decide what the common good is and when it requires his knightly service.<sup>58</sup> He is prepared, in other words, to give his mind to the state but not to cede his independence; for the pure state has nothing to give back to the separate person, and so ceding it would mean losing it. During this period, accordingly, the nobleman's characteristic speech-act is counsel imparted to the state's representative (not to Charlemagne personally) for the common good.<sup>59</sup> By this speech, the nobleman recognizes the abstract idea of an Empire but not its actual sovereignty. But then nobility is distinguished from baseness only by its hypocrisy. It venerates the state in words but not in deeds.

The speech of counsel fails to realize either the natural law or the individual's dignity. True, the common good has gained a reality of sorts in the reverence shown it by the nobleman's rendering advice to its representative. As yet, however, it has no authoritative will with which to decide among the various counsels or to enforce a decision against private opinion. Hence it is "not yet a *government*, and therefore not yet in truth an actual state power."<sup>60</sup> As for the nobleman, he has doubtless acquired through his seat at the Emperor's council both self-respect and the esteem of others. Nevertheless the recognition he receives is only the general honor bestowed by an unseeing "public opinion" on the members of his estate; it is not yet the official public recognition bestowed on *him* by the common good's representative.<sup>61</sup> This neglect is, however, fitting, for as an individual he has clung to his isolated person and in that respect is no different than the serf.

Initially, the nobleman judged the pure state good because he thought he would find in service thereto his selfhood endowed with an objective significance. He was mistaken. He has discovered that such a state would nullify rather than confirm his ego, and so he has recoiled from it into his separate ego, external to and exclusive of others. As a result of this experience, the nobleman undertakes a revaluation of values. For him, as we saw, "the bad" is whatever conduces to "a state of nothingness [*nichtige Wesen*]."<sup>62</sup> But then the pure state must now be judged bad, for the individual ego found only its nothingness therein, and the identity of universal and particular egos sought instead in wealth. For wealth, Hegel says, at once "tends to the general enjoyment . . . and provides everyone with the consciousness of his particular self."<sup>63</sup>

Because the commonwealth promises room for the satisfaction of self-interest, the nobleman is now prepared to relinquish his independence to it – to recognize its sovereignty in exchange for patronage – for office, honor, and wealth. Once again he does this by means of a speech-act. The speech that, in giving up self, constitutes political authority is flattery: the haughty vassal becomes the obsequious courtier. In flattery, the common good is venerated not as a mere thought but as incarnated in a specific individual whom flattery endows with effective authority. This individual is an absolute monarch. First, he is an *absolute* monarch because flattery constitutes his authority through

the subject's self-abasement such that there is no independent person in the subject whose right to respect could constrain authority. Having alienated their persons to the ruler, they cannot be wronged by him, and so his authority is juridically unlimited. Second, he is an absolute *monarch* because the alienation by all of their claims to independent self-rule entails rule by a singular – an atom – through whom alone the common weal speaks and acts. *L'état, c'est moi*. Still, the monarch is indebted for his exclusive authority to the nobility, whom he rewards with the wealth of the state.

Whereas counsel failed to realize either the common good's authority or the individual ego's worth, flattery succeeds, but to the ruin of both. The reciprocal mediation of antithetical natures results in their mutual corruption. By his self-alienation, the courtier has constituted a public authority at once exclusive of him and a means to his isolated self-interest. Thus, the state is reduced to an object of plunder – dissipated among private quests for gain here incompatible with its public nature. Realized, the state proves to be not the individual's essential nature – not his proximate end – but rather a means to the gratification of his narrow self-interest. What was thought to be humanity's immutable essence is now concentrated in a single individual who “is abandoned to every stronger will.”<sup>64</sup>

The individual ego's realization is no less self-contradictory than that of his supposed essential nature. In exploiting the state for his selfish ends, the nobleman is distinguished from the base character only by the gratitude and loyalty he professes to his benefactor. Soon, however, even this distinction collapses. Having ceded his independence to the state, he is now exposed to the caprice of a single person on whose favor he depends for his honor and sustenance. The objective reality of his inherent dignity is thus his abject humiliation. But since the purpose of the nobleman's recognizing state authority was to gain his own recognized dignity, the defeat of that purpose removes the ground of political obligation. Thus gratitude and loyalty turn to inner revolt, flattering speech to cynical speech. With the retraction of his political commitment, however, there disappears the last intrinsic distinction of nobility as well as the sole legitimation of monarchical power. The nobility now enjoys honor and privilege but lacks the political virtue that seemed to merit them; while absolute monarchy is supported only by the cynicism that requires some illusory ideal to debunk.

#### 4.4 *Disillusionment and Enlightenment*

From the outset of this post-Roman period, thinking has assumed a fixed antithesis between the identity of universal and particular egos in the state and the differentiation of the particular ego outside the state. In identity it has seen humanity's essential nature, calling it the good; while in difference it has seen nothingness, calling it the bad. It has assumed, moreover, that these polarities are mutually external and indifferent. Humanity's rational essence stands over against a natural ego in thrall to an autonomous drive for dominion unresponsive to the essence – to what St. Thomas called “the law in the fomes of sin.”

Thus for medieval thought the natural law is *not* immanent in the law of fallen nature; a supernatural aid was needed just to make possible humanity's conformity to its natural potential.

Yet the historical action of nobility has belied this conceptual framework. It has consisted precisely in bringing together and mediating what thought has so rigidly separated. By a longing (understood by Hegel) of its nature, the natural ego has been inwardly moved to become actually the recognized individual it is inherently. And the result is that in the absolute monarchies of pre-Enlightenment Europe, the state is both identical with a natural ego exclusive of others and the prey of sycophantic courtiers. So the essential has been reduced to the inessential, the good to the bad. But furthermore, the corruption of the supposed human essence was caused by its inescapable connection with the ego of the natural individual upon which it depended for effective realization. So the inessential turns out to be essential, or what was thought bad is really good. Finally, the criterion for distinguishing nobility from baseness has also collapsed. The willingness to renounce direct acquisition for state service has only reduced the state to a feeding trough, while the acquisitiveness that until now has defined baseness is about to ground a new form of virtue.

The awareness of this tendency to inversion of the dichotomies fixed by abstract thought produces the cynical speech of decadent aristocracy, a representative expression of which Hegel finds in Diderot's *Rameau's Nephew*. The dialogue's main character is the cross between a leisured aristocrat and a *bourgeois* hedonist that the French courtier has become and whose product is a self-indulgent layabout and parasite. Recapitulating in satire the entire preceding period, his speech brings together notions that a naïve moralizing holds far apart. Selflessness is blameworthy hypocrisy, selfishness laudable honesty. Those who act virtuously are miserable; panderers and seducers reap rewards. "Pay court, pay court, know the right people, flatter their tastes and fall in with their whims, serve their vices and second their misdeeds – there's the secret."<sup>65</sup> By means of this speech the courtier finds in secret rebellion the objective worth that eluded him in sycophantic service. For by expressing the vanity of human models purified of ego, cynicism affirms the reality of what the models malign.

Nevertheless, the satisfaction afforded by cynicism is a hollow one. "The vanity of all things," says Hegel, "is its own vanity, it is itself vain."<sup>66</sup> Because the cynic is aware of his reality only through the disclosed unreality of ideals external and incommensurate to the ego, he is dependent on the very regime whose aristocratic pretensions he debunks. Indeed, he depends on a regime whose sole remaining prop is the cynic's own need to flatter himself with its vanity. Bound to that regime, the cynic does not dare seek an alternative conception of humanity's essential nature – one that would incorporate the experience with the last and before which the established order would crumble in fact as well as in words.

And yet such a conception has now been historically prepared. To see this, consider the positive implication of the cynic's negative speech. The insight that

the essential nature is inseparable from the individual ego, that virtue is connected to self-interest, implies a doctrine of cynicism only for a thought that begins from their mutual exclusion – that identifies the good with selfless virtue and treats regard for self as bad. And yet grasped in thought, the connection (disclosed by the previous action of nobility) of the essential nature with the particular ego is just the pure ego *immanent in each individual* – the ego that wills only what all self-interested egos could will for themselves. Transfigured by thought, the insight that produced the speech of disillusionment now gives birth to the philosophy of Enlightenment.

## 5 Pure Insight and the Kingdom of Finite Truth

### 5.1 *The New Human Nature*

The measure of being and nothing, good and bad, is no longer external to the individual ego. The criterion of truth is now transparency to the natural ego's own human understanding, the criterion of the good the natural ego's own cultivated judgment of its self-interest. Thus, theories of natural phenomena are valid only if they can be verified by common experience; theories of social phenomena are compelling only if they explain in terms of the general utility; that alone is considered good which promotes self-interest within bounds taught by experience and generalized by natural reason or sympathy.

As the arbiter of the true and the good, the human understanding is characterized by Hegel as pure insight. It is insight in contrast to the religious belief in a Reality alien to understanding; it is pure insight in contrast to the impure insight of the courtier turned cynic. For the cynic, the ego was identified with the isolated and exclusive ego. Therefore, his critique of an external good in the name of the ego (saying that virtue is dissembled egoism and egoism authentic virtue) had only a negative significance: it destroyed without reconceiving the idea of a common good. For pure insight, however, the ego to which the good reduces is the *inclusive* ego, the ego common to all – universal self-consciousness; hence the critical insight into the illusoriness of human models external to the ego is also a positive insight into a new conception of the human individual's essential nature. He is now inherently a self-interested agent in whose natural reason or faculty of sympathy a law for all self-interested agents is immanent. He is thus naturally good rather than fallen. It is only dependence on opinion – a public opinion that rests distinction on wealth and the opinions of patrons who dole it out – that corrupts him.

With the dawn of pure insight, accordingly, the conception of the exemplary human being has changed. The nobleman distinguished by altruistic public service is now superseded as an ideal human type. In its place has emerged the man of enlightened self-love – the *bourgeois*. Of course, this looks like a lowering of ideals and a decline in taste and refinement that inspires the nostalgia of which de Tocqueville is perhaps the type; but Hegel sees more deeply that the change bespeaks moral cultivation. The ideal of aristocratic public service



was a reflex from an identification of self-interest with the competitive quest for dominion of the exclusive ego. Such, according to the thought of the time, was the fixed nature of the human individual, and so (for the historically relative reasons Hegel has understood) men assumed themselves and each other to be of this nature. Thus, the altruistic nobleman had within him an imperial person. Law was therefore outside the ego – remote from it. But with pure insight, not only have human ideals changed; what was supposedly fixed human nature has changed as well – and for the better. Through the education he has undergone, the imperial person who knows no law has developed into a moral subject – a subject who knows that restraint under law accords with self-interest prudently understood. So law is now immanent in the ego. But such a development in human nature must be one – a very basic one – of the conditions necessary for philosophy's being the one thing still needed for harmonizing civic virtue and private self-interest.

At this point, however, we are still far from the time for the philosopher's intervention. This is so because the ego that is now regarded as the final end of things is a species or universal ego still exclusive of, hence irreconcilably opposed to, the determinate or particular ego. True, the universal is immanent in the natural individual as the latter's own enlightened ego; still, its practical authority must oppose the independence of the natural ego with which the particular ego is still identified. This is just the consequence of the distinction between natural and legal/moral obligation. The individual ego might be inclined from self-interest informed by experience to pursue its ends within bounds compatible with others' pursuing theirs. But moving from natural (prudential) obligation to legal or moral obligation requires cancelling the rule of natural self-interest and acknowledging an impersonal authority whose laws might or might not accord with self-interest as the natural ego judges it. And where the particular ego is identified with the natural (immediate, brute) ego, this will mean a harsh opposition between the universal and the particular ego.

But why is the particular ego equated with the natural ego? Isn't there a sense of the particular ego as the ego through which the universal speaks, through whose discretion it is particularized in positive laws suited to diverse situations, through whose agency its authority is actualized? Isn't a magistrate an example of this?

The answer is always the same. The particular ego is the natural ego because of humanity's self-estrangement in the socio-political world it has created. In the emergent absolute monarchies of the sixteenth and seventeenth centuries, natural law's representative and the self-realizing man came into a relation through which the representative sought real authority and the man sought recognized distinction. What occurred instead was that natural law's authority became dependent on sycophants conditioning their support on their private enrichment, while the man became dependent on the favor of a legally untrammelled will. Each side found the means of its confirmation in something alien and incompatible with it. For Hegel this outcome is the

self-contradictory realization of a rational project – of a particular conception of humanity's essential nature. It is therefore intelligible in terms of the logical three-step framework (see 4.1) he has brought to the historical material. For the eighteenth-century intellectual, however, the world of despotic monarchs and jockeying courtiers lies inertly alien and indifferent to reason. It is simply there, and he can discern no law in it.<sup>67</sup> To him it is opaque. But if the socio-political world is alien and indifferent to reason, then reason must reside exclusively in an individual ego alienated from the socio-political world – in a detached, atomistic, hence immediate or natural ego. And if, as the eighteenth-century intellectual thinks, the political world's opacity is a fixed condition, then so is the individual mind's detachment from the world.

Accordingly, because the socio-political world is, as a matter of historical fact, estranged from pure insight, the latter is the insight of an ego detached from the socio-political world – of a natural ego. That is why the particular ego is at this point identified with the natural ego. No doubt the natural ego has changed. No longer the imperial person, he is now the enlightened man in whose *amour-de-soi* an inclination toward restraint is immanent. Nevertheless, because the natural ego judges for itself where its rational interests lie, it is on a collision course with a universal ego endowed with authority, and so too, therefore, is the particular ego whose fate is entwined with the natural one. From this we may learn that another condition defining the ripeness of the time for Hegel's *Phenomenology* is a transformation of the *ancien régime* in accordance with the pure ego's end-status such that insight need not recoil from the world but can rather attend to the reason dwelling within it.

### 5.2 The Enlightenment Project

In the eighteenth century, however, the intellectual stands firmly by the claim that rational purpose lies solely in the individual ego, not in the world. Hence philosophy's insistence since Socrates that the objectively true, right, and good be demonstrable to subjective insight as their completion becomes the *philosophe's* claim that formal insight is the *sole* criterion of the true, right, and good – a doctrine that can reject contents as unintelligible but that has no content of its own. Because of its emptiness, the *philosophe's* doctrine of the primacy of insight lies open to a twofold challenge – one theoretical, the other practical. The theoretical challenge comes from a religion that has something to say about humanity's final end but for which the truth about that end is externally revealed and beyond understanding. The practical challenge comes from a world whose rulers, both secular and religious, base their authority on revealed truth.

For the Enlightenment *philosophe*, the existence of these challenges creates an artificial disparity between the inherent potential of human beings and their actual condition. Potentially, he thinks, all human beings are capable of judging by their own lights what to accept as a fundamental tenet of their lives; they are free in exclusive submission to their reason; and they are equally worthy of

respect by dint of their equal capacity for self-determination. In fact, however, they are superstitious and credulous, believing on authority things that defy reason; they are servile to rulers who derive their authority from inscrutable foundations; and their self-worth is in the hands of priests and despots who maintain a system of hereditary privilege. This disparity between existence and essence inspires a twofold project or intention. One is to realize the intellectual's conviction that transparency to insight is the sole criterion of valid authority, and this it will do by means of a critique of all positive authority – all authority based on grounds not transparent to insight. The other is, through this critique, to universalize pure insight, to lift all humanity up from prejudice, from dependence on received opinion, to the independent use of their reason – *aude sapere!* This twofold project is what is called Enlightenment, and in it the *philosophe's* intention is as pure as his insight; for in attacking positive authority, he (in contrast to the cynic) means to exalt not his particular ego but the ego common to all – human self-consciousness.

The campaign of pure insight is directed against both the historical state and Christian belief, because in both individual selfhood has alienated itself – become dependent for confirmation of its worth on someone's caprice on the one hand, on an object demanding self-erasure, on the other. The subversion of absolute monarchy is a relatively simple matter for the Enlightenment *philosophe*, because the cynical speech of the disillusioned courtier has already done the work. All the *philosophe* need do to achieve his purpose is to reproduce the speech in literary form, as Diderot has done in *Rameau's Nephew*. This is so because, by giving artistic and hence universal expression to the scattered utterances of disaffected individuals, pure insight removes the last prop from under the *ancien régime*. That regime had endured, as we saw, only because the cynic could not gain confirmation of his worth otherwise than by heaping scorn on the regime's pretensions to enforce the natural law enjoining disinterested service to the common good. But the literary representation of the cynic's speech shows him that he is not alone, that his cynicism is shared by all. It therewith also shows him that the ego to which the common good collapses is not the ego of this or that individual but ego in general or the self-consciousness defining the human as such. But one's humanity affords a ground of self-worth much firmer than a speech dependent on a tottering regime and renders both cynical speech and *ancien régime* superfluous.<sup>68</sup>

### 5.3 Faith and Reason: a Fraternal War

The basic structure of the new regime is implied – already present in embryo – in the Enlightenment attack on Christianity. On its face, pure insight is a formal criterion of validity that can do nothing but criticize belief structures seemingly alien to insight; it seems incapable of unfolding a positive content of its own. Nevertheless, we'll see that something positive is indeed implied by the Enlightenment's critique of Christianity; and that positive outcome will be the outward embodiment of Enlightenment in a social order of its own. Again, therefore, we

must ask whether the embodiment corresponds to or contradicts the concept it embodies – here, whether the embodiment realizes or negates Enlightenment as a *pure* insight and a *pure* intention.

Let us first consider the nature of the combatants separately. For Hegel, both Christianity and pure insight are reactions against the world in which “everything is outside itself in what is alien to it”; and both are conditioned by the world they react against. Because the *philosophe* (unlike Hegel) sees no law in the political relation between monarch and courtier, he locates reason solely in himself, denying it in the world. Because *this* world seems opaque, he denies reason’s presence in the world generally. As a consequence, his standard of truth and right is emptily formal – insight. He knows no objective content of political right because all content – monarchy, the hierarchy of classes, their privileges and burdens, etc. – belong to the objective world he recoils from.

Christian faith too is conditioned by the world of self-estrangement it flees. Because in the real world the mutual recognition of the universal and particular persons of Spirit resulted in their mutual corruption, Christianity projects the reconciliation of opposites to a place beyond the world. Treating an underdeveloped world as a fixed human condition, it rejects the world *tout court*. And because Christianity (justifiably at this point) equates insight with the puny understanding of a natural individual confronted by an objective reality opaque to him, it relates to the Absolute through faith rather than insight; for a natural mind could only contaminate the Absolute it presumed to elucidate. So, the relation of universal, particular, and Whole is not grasped clearly and conceptually as a necessary connection of ideas; it is rather apprehended cloudily as a miraculous combination of images – Father, Son, and Spirit. Christian faith, according to Hegel, has the true content of the Absolute but in the form of unconscious metaphor; whereas insight has the form of thought but as yet no objective content. Since each has what the other lacks, one might think they were ripe for synthesis in Hegel’s philosophy. But one would be mistaken. Why?

Faith and insight are not only reactions in opposite directions (toward the object and subject, respectively) against the world; they are also reactions against each other. Faith for Hegel is an inchoate form of thought; it is an intuitive and imaginative pre-thinking and so an active participant in the reality it mediates. However, faith does not know itself as an active contributor to its truth; it regards itself as a passive recipient of an incomprehensible truth immediately revealed to it. Faith suppresses the awareness of its thoughtful participation in its reality because, equating thinking with the content-less critical detachment of the *philosophe*, it rejects thinking as such *for* an absolute content. Moreover, given the opacity of political life, there is no historical possibility for an insight that is not detached and critical. So faith has a historical justification: at this point, positively to attach oneself to the true content one must indeed devalue insight. And yet to devalue thinking is to devalue faith’s own representations of its truth.

For his part, the *philosophe* exalts insight as the formal criterion of truth; but because the only comprehensive contents of purported truth present themselves as belief systems foreign to insight, he must *reduce* (debunk, belittle) the purported truth to (as) a human construction serving human ends – a pyrrhic victory for humanity. Moreover, given the irreconcilability of Spirit's opposites in the world, there is no apprehension of the true content otherwise than by an obscure imagery that insight must mock as *mere* human construction. At this historical juncture, therefore, there is no possibility for a synthesis of Christianity and Enlightenment.

In sum, then, the eighteenth-century struggle between faith and reason is a fraternal war between foes each of which, in overreacting to a contingent situation, attacks the other but thereby attacks an element of itself. Faith denigrates reason as such because it identifies reason with the detached reason of the *philosophe*; pure insight detaches itself from all content because it equates content with the merely positive and opaque content of the *ancien régime* and its religion. Yet each has the other within itself. Faith is a form of thinking, and insight claims to be the criterion of universal and objective truth. And so in denigrating the other, each will end up disparaging itself. For Hegel, both are unwitting abstractions from a Whole of which they are really parts. The Whole is divine Spirit's self-knowledge through the philosopher's insight as the law of reality. But because each side absolutizes itself at the expense of its complement, each will emerge from the war a loser.

#### 5.4 *The Enlightenment Attack on Christianity*

The opening for insight's critique of faith is provided by faith itself. This is so because, although the God of Christian faith is external to man, He is nevertheless subjectively internalized by the believer both through symbolic representation (for example, in the bread and wine) and practical worship. This internalization carries a twofold significance. It is both the past incarnation, death, and resurrection of God made continually present in the Church; and it is the redemption of the believer – his or her reception of infinite worth. Moreover, these two meanings are inherently connected. The believer is saved from nothingness through representation and worship because the eternal God's present sovereignty is realized through the believer's recognition thereof in ritually receiving God's sacrifice. Thus, God is understood to be both transcendent of man by virtue of His being eternal and immanent in man by virtue of the sovereignty-realizing force of human representation and worship.

While the two meanings are inherently connected, however, they stand here in actual tension. This is so because of the meaning faith attaches to God's transcendence. Because His transcendence here signifies externality and remoteness from the human, the connection between transcendence and immanence is really an incoherent combination, a wavering between extremes in irreconcilable opposition. So, for example, Christ's redemptive sacrifice is on the one hand a past event and his story alone, but on the other hand also a present

event ever repeated in the communion rite, where it is everyone's story. Correspondingly, the believer's cultic practice, his merging with Christ, is held to be rich in significance as his elevation to immortality, but also of no significance, for the passion and resurrection are past events involving only one individual; the believer must wait. Likewise ambiguous, therefore, is the individual's redemption. It is an inward certainty, but its reality is not of this world. For Hegel, this tension in Christian belief between the remote and present embodiment of the Divine, or between the transcendent and immanent dimensions of God, is its fatal weakness – that which, at any rate, renders it vulnerable to Enlightenment.

The Enlightenment's attack on religion follows a consistent pattern. In its critique of Christianity's dogma and ritual, insight reduces to exclusively subjective or human terms that which faith tries to maintain as an external-subjective, divine-human paradox and tension. So, for example, the rationalist observes the believer's activity in symbolizing the Divine through everyday familial imagery and on that account interprets the Divinity as a product of human imagination. He also condemns as barbaric superstition the Christian worship of the eternal God in sensuous objects – the crucifix, the bread, the wine; for where faith sees the present embodiment of the Divine, the rationalist sees only a perishable object – “a block of wood that has eyes and sees not, or again, some dough that grew in the field, was transformed by men, and returned to earth.”<sup>69</sup> The rationalist also undermines the believer's certainty of redemption by reminding him of the fallibility of his knowledge concerning the historical facts on which his certainty depends. And he mocks the self-denying acts whereby the believer seeks identification with Christ, for it seems pointless to renounce particular possessions and particular pleasures in order to be rid of the desire for these things. So whereas faith holds now to the efficacy of human self-renunciation, now to its futility, Enlightenment asserts only the latter.

These criticisms touch a nerve. The believer is himself uneasy about his anthropomorphisms, for what can they have to do with a God incommensurably transcendent of man? He is sensitive as well to the charge of idolatry, for he too teaches the vanity of material things. No doubt, his certainty of redemption springs from an intuition about the divine nature that has nothing to do with historical contingencies. And yet the believer cannot deny that his faith rests on the happening of empirical events in the distant past – events mediated by witness reports altered in transmission – so that the rationalist's critique is only partly beside the point. Finally, the believer too asserts the inefficacy of works for salvation.

The goal of Enlightenment's critique of Christianity was to vindicate human self-consciousness as the ground of the true and the good. It has, however, accomplished just the opposite. The campaign against faith has made explicit the contradiction latent in Enlightenment from the beginning. On the one hand, Enlightenment affirmed the universal ego of humanity as the ground of reality; on the other hand, it accepted at face value faith's testimony that its Absolute is an object external to humanity. This is just the consequence

of the *philosophe's* detachment from an objectively existing reality that he leaves correlatively detached from the universal ego. Given its posture of withdrawal, Enlightenment's vindication of the universal ego as the basis of truth had to take the form of a critique *debunking* the object of faith as a product of human self-consciousness. The Enlightenment found itself *belittling* the God of Christianity as a human invention. Thus its deprecation of faith was equally self-deprecation. To show that something had its ground in human self-consciousness was to show that its validity was *relative* to human self-consciousness. So the positive implication of the Enlightenment critique of religion is just that human self-consciousness is a one-sided subject, cut off from an objective reality that atheists call unformed matter and that deists call *L'Etre Supreme*, but that in either case is simply the negative residue of the human construction of reality. And since Enlightenment has thereby subverted without rebuilding the medieval basis of objective truth, it has belied its claim to be a pure insight in contrast to the impure insight of the cynic.

### 5.5 *Enlightenment's Social World*

So much, then, for the critical side of Enlightenment. Although the *philosophes* do not intentionally replace the foundations they subvert, they do so unintentionally, as Hegel proceeds to show. True, as a purely formal criterion of validity, insight seems to have no content of its own. Yet if it did nothing but criticize, it would be indistinguishable from the cynical insight that also depended on a corrupt regime for something to do.

The positive content of Enlightenment is already implied in its critique of Christianity. The outcome of that critique is that the truth about practices such as religion, morality, and law is that they are artifices useful for humanity but that this is a finite truth – a truth within a human horizon. Distinguishable from the relation of an *explanandum* to humanity is an unknown and unknowable objective reality to which the natural ego is inessential. This means that the natural ego is properly both end and means. As a locus of a species ego, it is on the one hand a final end, and all things – nature, society, state, morality, and religion – are rightly a means to its happiness. But as a natural individual who is insignificant before an indifferent objective reality, the ego is also fair game for other final ends. So the natural ego is permitted to use all others for its ends provided that it lets itself be used by others for their ends. “Just as everything is useful for man,” writes Hegel, “so man is useful too, and his vocation is to make himself a member of the [herd] ... serviceable to all.”<sup>70</sup>

That, however, is the morality of the market. The positive outcome of the Enlightenment's critique of Christianity is a moral justification for a relation among human individuals characterized by mutual use for the satisfaction of wants – for pleasure. What under the *ancien régime* was a sphere for the ignoble – a state of nothingness and the bad – is now raised to a moral dignity. As a final end, the human ego has a *right* to use all on condition that, as an inessential individual, it also allows itself to be used by all. The natural ego is dignified as a human self-consciousness but lowly as a determinate individual,

and so he is both an end-in-itself and a means for others. But this conditional moral licence to use others for the satisfaction of one's wants creates a link between the enlightened pursuit of self-interest and the general happiness such that the satisfaction of each is mediated by service to all. Because the enlightened *bourgeois* uses others only by serving them in turn, the general happiness is best served by permitting everyone the maximum liberty to pursue self-interest compatibly with the liberty of others to do the same. Formerly opaque, the social world now exhibits an economic law discoverable by human intellect: the fusion under conditions of free trade of public and private interests.

That social world is the positive embodiment of Enlightenment. It is the realization of the *philosophe's* "pure intention" to vindicate human self-consciousness as the ground of the true, right, and good. It is, however, a self-contradictory realization. This is so because in the free market, the good has become identified with maximizing the aggregate sum of pleasures across natural egos, an idea Rameau's nephew could have subscribed to. The right is the system of laws most conducive to that state of affairs, and the true is the system of beliefs most likely to sustain such laws. The campaign to educate people to the independent use of their reason has produced people who strive to become useful members of the "herd" in order to obtain the satisfaction of a cow.

Nevertheless, if the *philosophe's* intention and insight have turned impure in their realization, this is not an outcome he laments. On the contrary, a society governed by the morality of the market is one that insight can finally approve, for it sees itself mirrored there. At the dawn of Enlightenment, insight confronted a world of despotic rulers and decadent aristocrats – an opaque world from which it could only recoil into destructive polemic. Now, however, insight confronts a social world that is its own product, in which it sees itself reflected, and to which it can therefore adapt. In the previous world, the reciprocal mediation of universal and particular egos resulted in the corruption of both. In the market, by contrast, the general happiness and the individual's happiness are preserved in their mutual mediation. Because the enlightened *bourgeois* lets himself be used by others as a means of benefiting himself, the general interest can in turn use selfishness as a vehicle for its own realization. And because the general interest gives free rein to selfishness, the individual can reciprocally serve society without self-loss.

However, the mutual complementarity of universal and particular egos such that each is realized through deference to the other is just the absolute Spirit that Christianity takes for a revealed truth. The unity of opposites that for Christianity is an incomprehensible article of faith is for Enlightenment a transparent object confidently understood in the science of political economy. And what Christianity takes for a gospel revealed to humanity in the past, accomplished without its participation, and to be fulfilled in the hereafter the market continually produces in this world through individuals who serve each other for private gain. So, says Hegel, "the two worlds are reconciled and heaven is transplanted to earth below."<sup>71</sup>



Of course, Hegel's remark is tongue-in-cheek. The kingdom of heaven that has descended to earth has become a "kingdom of finite truth," where all explanation invokes the utility of the human animal, where avowedly inessential natural egos are taken for final ends, and where the supreme good consists in the greatest possible satisfaction of their appetites. And if the utilitarian side of Enlightenment is at home in this kingdom, there exists another – a romantic – side of Enlightenment that enters it with deep regret.

The Enlightenment attack on Christianity never did justice to the profundity of its vision. Rather, the Enlightenment simply attached a one-sidedly human and subjective significance to the symbolism by which faith sought to internalize the divine-human story of self-diremption and reunification. Nevertheless, faith succumbed to Enlightenment. A divine transcendence equated with externality vis-à-vis the human could not survive insight's "[illumination of] the heavenly world with images drawn from the world of sense."<sup>72</sup> It could not, that is, tolerate the believer's anthropomorphic ways of representing the Divine. Presented with those representations, faith had to admit the contradiction and exchange the rich content of its religion for the unknown and unknowable Supreme Being of Deism, incommensurate with every human way of characterizing it. But neither in its relation to such a Being nor in its relation to society does the individual ego gain confirmation of its essential significance. In the Supreme Being it confronts a Reality that shuns all contact with it; in market society it is exposed to a reward system driven by shifting wants and indifferent to its particular welfare, which is left to chance. Thus, the earthly paradise of the utilitarian philosophers is radically flawed. It bears, writes Hegel, perhaps with Rousseau in mind, "the stain of unsatisfied yearning."<sup>73</sup>

## 6 The Pure Will, Revolution, and Terror

### 6.1 *The Ascension of Humanity*

Historically, this frustration is now potentially overcome. The Enlightenment's self-contradictory realization creates the conditions for rethinking humanity's relationship with the objective reality it faces. Upon first asserting its claim to end-status, human self-consciousness confronted a world the Enlightenment did not produce – one that, in its opacity, seemed alien, self-complete, and indifferent to human purposes. Consequently, while deposing external essences and supernatural ends as the organizing purposes of social order, the human ego was not yet ready to occupy the vacant throne. We see this diffidence in various places: in the Enlightenment's positivist epistemology, which, while reducing the given manifold to concepts produced by the human understanding, still defers to what is empirically given as the touchstone for the validity of concepts; in the period's moral philosophy, which accords natural priority to the animal drive to self-preservation, to which the "artificial" faculty of reason is entirely servient; and in the *philosophe's* deference to enlightened despots who, like Frederick the Great, by good fortune support progressive ideas.

However, the world now facing human self-consciousness is the Enlightenment's own product. It is a market society that reflects Enlightenment's half-hearted conviction concerning the end-status of humanity. Because every natural ego is an end-in-itself only in being also a means for others, the general happiness can be realized by deferring to the free pursuit of self-interest. But this nexus between the general and the particular, says Hegel, is "pure metaphysic."<sup>74</sup> It reflects the immanence of the species ego in each human individual. So too does the equivalence between certain quantities of qualitatively different objects issuing from an agreement of free wills in market exchange. The possibility condition of this equivalence is just the common ego immanent in each human individual – the very ego grasped at the outset of Enlightenment as the new human essence.

Since, however, the social world now reflects the unity of the general and the particular in self-consciousness, the latter need no longer regard itself as a finite human purposiveness confronting an indifferent objective reality. Rather, it may now confidently assert itself as the final end of nature and historical progress, hence as the only rightful political sovereign for natural egos. From this ascension of humanity may be derived certain fundamental principles of political right, such as the equal dignity of species egos as final ends and their potential autonomy as self-legislating ends. These ideas need no longer be regarded as artifices of reason having no normative privilege over ancient traditions. Rather they are now understandable as principles of *natural right* before which tradition is nothing – principles to which ancient laws and institutions are answerable.

Humanity's essential nature is thus still taken to be the species ego grasped initially by Enlightenment. It is the abstract identity of different natural egos, not yet Spirit's unity-in-otherness of the general and the particular that we see in the market's invisible hand. Let us try to understand this. Why are the times not yet ripe for a philosopher's grasp of Spirit as the fundamental reality?

The so-called fusion of interests in the market does not mark the historical potential for the reconciliation of the extremes; hence it is not the historical possibility for Hegel's grasp of their primordial reconcilability. To be sure, this fusion is metaphysical; it is the same reciprocal mediation of universal and particular ends that Spirit is. Indeed, it is an instantiation of Spirit. However, it is a deformed instantiation in that the nexus is mechanical rather than purposeful. It is a blind connection between mutually external poles, neither of which has the other's interest for its aim. As a consequence, the satisfaction of each is hostage to chance. To the individual, the law of supply and demand is an external fate to which his welfare is vulnerable; while the general happiness is thwarted by concentrations of economic power causing market failures, polarizing society into rich and poor, and making the poor dependent on the rich. Thus the mutual mediation of the extremes is a dependence of each on an indifferent other not unlike the mutual dependence of monarch and courtier. It is a relation of mutual self-estrangement.

Now, given the mutual externality and indifference of general and particular interests in market society, their *inward* unity had again to be grasped by a thinker critically distanced from the world. There being nothing but heteronomy in the social world, the pure ego's autonomy must be an ideal set over against it. The thinker whose thought holds the germ of the future must once again view the world from a position of detachment. He must become, as Rousseau does, a "solitary walker." But then his particularity as Jean-Jacques is still enmeshed with his natural, immediate, and accidental existence. Consequently, his essential human nature must be conceived as a pure ego exclusive of particularity as such – as a general will exclusive of a particular will.

So the essential nature conceived by the detached *philosophe* has not changed. Still abstractly general, it has simply risen from an acceptance of limitation by an independent nature and historical tradition to a claim of world sovereignty. And the cause of its continued abstractness is the philosopher's need critically to distance himself from a world of heteronomy. From this we may discern a further condition of the Phenomenology of Spirit's being the one thing still needed to attain a *purposeful* fusion of interests in a State adequately mirroring Spirit. It is that the critical philosophy of ascendant humanity must have exhausted its resources for realizing human autonomy in civil society such that the only thing needed to perfect autonomy is philosophical deference to the reason in history.

## 6.2 "Where the Self is by Proxy, it is Not"

To raise the pure ego of the natural individual to the final end of the world is to make equal freedom the criterion of valid laws and institutions. That law is alone obligatory which all individuals, treating themselves as free and equal, would impose on themselves. By this criterion the historical order stands condemned. Inherently autonomous, the individual is in fact dependent for subsistence on the economically powerful; his life prospects are determined by hereditary distinctions of rank and privilege justified by tradition; and he is subject to monarchs whose authority is untrammelled. Having lost the support hitherto given it by humanity's finitude in the face of a seemingly independent reality, this disparity between humanity's potential and its existence no longer appears as a fate to be shrugged at or even as a misfortune to be overcome by the slow spread of enlightenment. It appears as a wrong. Certain that autonomy is his essential nature, the individual ego now acts to fulfill his inherent potential.

The individual's action consists in self-transcendence. He renounces the private aims that kept him in bondage to external powers and rises to his essential nature as a self-ruling citizen. This self-elevation achieves both a political and social revolution. It achieves a political revolution because it wrests political power from the monarch and draws it to the assembled people; it is a social revolution because it dissolves all civil relationships of rule and subordination – all hierarchical feudal relationships – into the rule of each in accordance with the pure will of all.

The revolutionary regime tends toward direct democracy. It is first of all a democracy because the general will that is sovereign is the pure or reasonable will of *each natural individual*. It is not a universal will independent of natural individuals and bringing individuals into a ruling partnership with the universal's representative on terms consistent with the preservation of its impartiality. That would be a constitution of which democracy is one element. Here, rather, the sovereign is an atomistic multitude of natural individuals whose pure wills merge in a general will. Each natural individual is thus his own sovereign insofar as he wills what all free egos could will. This is what, in the *Philosophy of Right*, Hegel calls popular sovereignty. But the people that is sovereign in revolutionary Paris is not the *Volk* in Hegel's sense, nor is French popular sovereignty the same thing as Athenian democracy. Hegel's *Volk*, as we saw, is a bi-personal connection, independent of natural individuals, between a universal and a particular will. In it there is no longer a multitude, for individuals have taken their places as incumbents of offices or members of estates and corporations. Here, by contrast, the people are a multitude, a mass. This is also what distinguishes modern popular sovereignty from the Athenian democracy the Parisians thought they were emulating. Strictly speaking, Athenian democracy was not a case of popular sovereignty. It was a *polis* sovereignty, where individual citizens shared a collective mind independent of their atomistic subjective minds. Here, by contrast, the general will is formed by a merging of subjective minds.

Compatible with modern popular sovereignty would be a system of representation in which the authorized deputy gave independent voice to the individual elector's pure will while the individual busied himself with his private affairs. However, representation goes against the grain of a republic for which the general will is not only the sole legitimate sovereign but also the human individual's essential nature, calling him to the civic virtue through which his human potential for autonomy is alone realized. Accordingly, the new regime's bent is toward direct democracy (with frequent plebiscites and the power to instruct and recall deputies) because identifying humanity's essential nature with the pure will denies all dignity to the pursuit of particular interests, making active citizenship the only way of life consistent with the human essence as now conceived. So, says Hegel, "where the self is by proxy, it is not."<sup>75</sup> In this way, the pure will's sovereignty implies an extreme egalitarianism – one that condemns not only hierarchy and domination but any *distinction* between ruler and ruled. Each ruled demands to be ruler immediately – without intermediary bodies. This is what Hegel calls "absolute freedom." It is one way – Rousseau's way – of recovering ancient political virtue on the ground of modern individualism. However, it is not, as Hegel will show, the right way.

### 6.3 *Anarchy, Terror, and Education*

Did the Revolution succeed in actualizing the general will's sovereignty and in fulfilling thereby the human individual's essential nature as his own lawgiver?

The answer is: yes and no. No doubt, the general will became sovereign in the moment of revolution – in the transfer of the individual's allegiance from external authorities to the assembled people. In that transfer, the freedom of all was realized, since the authority to which each submitted was his own pure will. However, freedom was actualized *only* in the moment of revolution. Once the old order of privilege was overthrown, the task for the revolutionary regime was to take over the regular business of government – to enact positive laws embodying the equal freedom of all and to apply them to particular exigencies. This process calls for legislative and executive decisions that make sense for a particular time and situation, or that are partly arbitrary in that they cannot be conceptually determined (shall the penalty for theft be 5 years or 6 years?), or that have differential impacts on different occupations – in short, that are not part of a legislation that would be universally self-legislated. In this way governance inevitably brings to the fore a particular will differentiated from the general.

However, this distinction, benign in itself, is intolerable for the extreme egalitarianism that is here the standard of valid law. For insofar as the executive wills something in particular, it ceases to will what all would *a priori* will for themselves and so becomes, from the standpoint of the sovereign general will, a special interest whose order is invalid. Because, in other words, the general will is here a pure will exclusive of the particular will (a consequence of identifying the particular will with the natural will, itself a consequence of the thinker's critical detachment from a historical world rife with heteronomy), implementing the general will means corrupting it. Thus, the executive, as Hegel says, "simply cannot present itself as anything but a faction."<sup>76</sup> But then to satisfy the self-impossibility requirement of valid law, the executive must be overthrown and its function absorbed by the democratic legislature. This, however, merely invites faction into the legislature, for the individual recognizes no enactment as the general will's that he could not impose on himself – a requirement of unanimity that transforms the legislature into a state of anarchy. In making unmediated self-rule the criterion of valid law, each natural individual has claimed sovereignty for its unilateral judgment as to what the general will requires, thereby sinning against the general will in the very act of defending it. Momentarily realized in the shudder of revolution, the general will disintegrates in its first positive act.

Therefore the revolution must continue. No longer, however, is the particular will expressed in the privileges of the nobility, for these were swept away in the first phase of the revolution. What remains as the sole enemy of the general will is the brute existence of the natural ego, whose demand for self-rule is an anarchic principle antithetical to the general will's sovereignty. Accordingly, the realization of that sovereignty is the physical annihilation of the natural ego. Unable to govern, the "sole work and deed of universal freedom is ... death ..." <sup>77</sup> It is a death, moreover, without reward or consolation, "the coldest, most banal death of all."<sup>78</sup> Nothing positive can come from it, for the pure will, having equated

the determinate ego with the natural ego, can give nothing back to the former in return for its sacrifice of the latter.

The Reign of Terror is for Hegel “the grandest and the last” civilizing force for the natural ego who, having fallen from the Greek *polis*, claimed a dignity on its own.<sup>79</sup> It is the climax of the education by self-estrangement that began with Rome. The Terror taught once and for all that the natural ego’s claim to solid reality is baseless – without support in the nature of things. No doubt, the natural ego has suffered negation before – in Rome, under the absolute monarchies of early modernity, and in modern commercial society. However, in those contexts, the natural ego’s self-alienation was rewarded in some way, whether with socially recognized property, political honor, or wealth. There, the natural ego’s insubstantiality manifested itself only in its self-contradictory dependence on the will of others for confirmation of its end-status. Where, however, humanity’s essential nature is membership in a civic body ordered to universal self-determination, no give-back is forthcoming to the natural ego whose existence is fortuitous. The general will’s authority condemns to nothingness the natural ego along with the wealth it has amassed and the natural advantages it has exploited without ratification by the general will. Accordingly, the terror of death experienced here is not anxiety in the face of chance, where the end of natural life is still presupposed; rather it is fear and trembling in the face of “the lord,” wherein is directly experienced and learned the vanity of natural life as such.<sup>80</sup>

Still, the individual is not lost. The general will in which the natural individual was annihilated obtained objective reality for its authority only in this process of negation. Thus, the action of the Revolution and the Terror belied the abstract thought of the Enlightenment for which the essential nature is just the pure will considered apart from its realization as sovereign. That action has shown, on the contrary, that the particular will is also necessary as that by whose self-transcendence *qua* natural, the general will is alone realized as an end. Now, what the French Revolution brought together in practice German philosophy unites in essence. Grasped conceptually, the interaction of the universal and particular will is a dialogue within one mind between reason and intuition – a dialogue wherein reason seeks confirmation of its ethical principles in a cultivated intuition and wherein intuition defers to reason to distinguish what is true in intuition from what is idiosyncratic. This unity is the moral philosopher, who is now taken to be the arbiter of the right and the good.

## 7 Morality, Hypocrisy, and Forgiveness

### 7.1 *The French Revolution is Only a Birth Time*

The new conception of humanity’s essential nature is a unity-in-difference of the universal and the particular ego in one self-consciousness – the philosopher’s. It is not yet the bi-personal unity-in-otherness of the universal and the particular ego in Spirit. The French Revolution and its export, while a necessary historical

condition for Hegel's grasp of Spirit, was not a sufficient one. Since Alexandre Kojève influentially thought otherwise, the point requires elaboration.

The French Revolution has contributed importantly to the historical conditions required to make Hegel's philosophy the last thing needed to bring a state into existence that reconciles ancient virtue and modern egoism. Its contribution consists, first, in its having withdrawn natural law from a given human nature into the free will, and second, in having actualized the new natural law of equal freedom against the existing order of political and civil inequality. By virtue of the first, the basis for the pre-modern antithesis between political virtue and individual freedom is removed; by virtue of the second, the class and religious discriminations implicitly abolished by the Enlightenment are wiped out in practice. Obviously, Hegel could not call for an acceptance of the rationality of what is if what is includes serfdom, the civil inequality of Jews, hereditary political privileges for an idle court nobility, and so forth.

It might be argued that by exchanging the privileges of the well born for the rights of man, the Revolution merely replaced the medieval conflict between selfless virtue and self-interested liberty with a modern one between equal self-determination and individual liberty. That is true. But while as rigid as the old antithesis and as productive of despotism (indeed, of a new form of totalitarian despotism), the new one is nevertheless an advance toward reconciliation. This is so because the conflict is now waged on the ground of self-consciousness – the ground, according to Hegel, of ultimate harmonization. The opposition between political virtue and self-interested liberty is now framed in terms that make their reconciliation a matter of the organic development and perfection of freedom and no longer of revolutionary change from servility to freedom. That is the sense in which the Revolution marks a “birth time.”

However, while bringing reconciliation closer, the Revolution did not itself achieve it, *not even potentially*. To say that the task ahead is to develop and perfect freedom is not to say that, with the Revolution, the true principle of natural right ascended the world's throne and all that remained was to extend its sovereignty over the globe, reforming traditional hierarchical societies in accordance with human rights. Thus spoke Kojève's Hegel but not Hegel. Rather, inwardly to develop freedom is logically to move from partial conceptions of freedom to a full conception. With the Revolution, freedom in a general sense ascended the throne, but the revolutionaries themselves had a faulty conception of freedom – one that leaves several logical steps and practical realizations before Hegel can, without betraying philosophy, renounce critical detachment and submit to what is. That is the sense in which the Revolution marks *only* a birth-time.

So what was faulty about the revolutionaries' conception of freedom? First, because the general will they exalted was tied to the natural individual with whom particularity was equated, it had to be grasped as a pure will exclusive of particularity as such. This meant that the executive branch of government lay outside the general will, where it could not but appear as factional. But if

the executive is a faction, then so too must be the legislature that opposes it and checks it externally. It too must therefore be checked by the executive. The upshot was that the general will's rule disappeared in the force and counterforce of particular wills. Second, because the sovereign was the pure will of each natural individual, the Revolution replaced external rule by a monarch with an anarchic demand that every individual give his deliberative consent to positive law. Any shortfall from direct democracy signified the tyranny of a particular interest. The result was that the general will could either disintegrate into a multitude of particular wills or else guillotine the natural individuals who were making its sovereignty impossible. So, if the Revolution sought the immediate union of the general and the natural will, the Terror revealed the logical impossibility of that union.

### *7.2 Political Heteronomy and the Apolitical Morality of Autonomy*

The Reign of Terror was thus the first step in the general will's detachment from the natural individual – in its becoming a transcendent or universal will. Repulsed by the universal, the natural ego withdrew its demand for self-rule, reverted to its private affairs, and submitted first to the Directory's and then to Napoleon's dictatorship of universal freedom – a rule that stifled through minute bureaucratic regulation the natural individual formerly obliterated by the Terror.<sup>81</sup> Because in the post-revolutionary state the universal will remains implacably opposed to a particular will identified with the natural will, the time is not yet ripe for Hegel's grasp of their inherent complementarity. Nevertheless, this is the vanguard state now facing the philosopher whose moral and political thought the time has prepared.

It appears to this philosopher that the model human rights state is a realm of heteronomy. Not only is post-revolutionary France such a realm but even the best possible state is. This is so because the natural ego, having seen itself annulled without reward in the universal will, could hold on to its particular worth only by regarding isolation and atomicity (its position outside a civic body) as its natural condition, in which it holds provisional rights of property in whatever it unilaterally and peaceably acquires. What then follows is that the public authority of equal freedom must be repressive of natural selfishness. It is not just relatively repressive for the bad man but naturally repressive for men as they naturally are – mutually indifferent. This means that even the best state must operate against potential law-breakers as a mechanical force against a rational calculator of personal advantage. So, for example, the state whose laws must meet a test of self-imposability actualizes equal freedom by means of sanctions conceived as in their nature incentivizing external threats. Where (as in situations of necessity involving a choice between murder and one's own death) the threat cannot work, there is no legal obligation to obey and no legal authority to punish. Second, since everyone is assumed to be self-interested and indifferent to others, the duty to surrender one's naturally unlimited right of self-protection to a sovereign holds only insofar as the sovereign



can give everyone confidence that others will be cowed by overwhelming might. Thus, the model state has the content of a *Rechtsstaat* but the form of a *Machtstaat*. Third, there is no right of resistance to an unjust ruler and generally no *enforceable* duty on the ruler to enact just laws, for otherwise the ruler would be answerable (as in revolutionary France) to the very natural individual whose independence the universal will's sovereignty must annul. Thus the ruled are once again subject to an unconstrained sovereign. Of course, all these conclusions are drawn by Kant in his *Metaphysics of Morals* (1797).<sup>82</sup>

Now since the *model* state appears to the philosopher as a realm of heteronomy, the autonomy vainly sought by the Jacobin revolutionary in direct democracy must now be sought outside the state – in a private, self-regarding morality. Unable directly to legislate coercive laws in the state, the exemplary man gives universal law to himself directly in his inner moral life. Irreconcilable in the best state, the universal and the particular will strive for union in the best man.

Where a morality of private and inward autonomy is juxtaposed to a life of heteronomy in the state, the morality is what Hegel calls *Moralität* as distinct from *Sittlichkeit*. For Hegel, morality's perfection is *Sittlichkeit*, understood as the joyful disposition to live by the laws of a state sufficient for human dignity – one from which heteronomy is gone. Here there is no dichotomy between legality and morality tracking that between external freedom under repressive law and internal freedom under law spontaneously self-given. Of course, law cannot rely on or force virtue, and so it must be backed by sanctions and be concerned only with actions insofar as they impinge on others' liberty. However, in the best state (as Hegel conceives it), law is not in its nature repressive (it is repressive only relatively for the bad man), for human beings are not by nature dissociated and mutually indifferent. Rather their nature (in the sense of their final end) is to acknowledge the authority of a state that reconciles public duty with their right of private independence.

Still, conditions must be ripe for this, and they are not. Annulled without compensation in the pure will, natural egos have reclaimed pre-political rights they now know (taking Kant's self-awareness as representative) are unreal and, in the case of property, merely provisional. Thus, as a matter of understood historical fact (one might say with historical right), they see the public law of universal freedom as an external force. They also view it as a regrettable necessity given that, on a spherical earth, one is physically constrained to live alongside others.<sup>83</sup> As a consequence, the free unity of universal and particular wills must be grasped as a *Moralität* that mentally withdraws from the state into solitary self-legislation.

### 7.3 Kantian Dissemblance

The initial form of *Moralität* is Kantian. Kant's moral philosophy is conceptually post-revolutionary, because it asserts a fundamental incompatibility between the natural and the universal will such that any attempt to unify them

corrupts the universal. That was just the lesson of the Reign of Terror. For Kant, the natural will (in his terms, the free will insofar as the determining ground of its choice is an object of the faculty of desire) acts for the sake of the pleasure anticipated from attaining an object it represents as desirable. The principle behind all actions of the natural will is self-love, for its fundamental end is its own happiness, understood as a general sense of satisfaction with life flowing from overall success in attaining one's objects.<sup>84</sup> Being able to attain objects represented as desirable is what Kant calls life, by which he understands a sphere governed by causal laws of stimulus and response applicable to human not less than to animal behavior.<sup>85</sup> However, rational beings are free from determination by such laws. Because they *can* make laws of universal freedom the determining ground of their wills, their choices to act from self-love are free – influenced but not determined by their susceptibility to external stimuli. Free choice motivated by an object of desire is choice influenced by sensible impulse; free choice motivated by an object of habitual desire is choice influenced by inclination. But the free choice whose sole determining ground is a principle all free agents could will to be a universal law is autonomous choice or what Kant calls positive freedom.<sup>86</sup> Autonomy is a potential unique to rational natures, and the end of morality is to fulfill it.

Now, in pursuing ends given by inclination, the will, though not unfree, is heteronomous – for it depends for its ends on inclinations toward objects to whose stimuli it is merely receptive. The inclination supplies the motive for the action and therefore remains the cause or determining ground thereof. Why did I eat the pastrami sandwich? *Because* I anticipated the pleasure I would experience in doing so. Though my action was free in the negative sense of being undetermined (I could have chosen to forgo the sandwich), it was not positively *self-determined* because my free will was not itself the cause of the action. To become the self-determining will it can be, the agent must act intentionally from maxims all free agents can will to be law rather than from inclination, for it then acts from ends generated by the free will itself. The pure will supplants inclination as the determining ground of the action. Why did I give the sandwich to the starving beggar? *Because* my property in the things I possess can be universally accepted by free agents only if it is limited by their survival needs. Only in acting self-consciously from maxims all free agents could accept as a law does the agent act morally rather than do what comes naturally.<sup>87</sup>

Because, however, self-love is understood to be *per se* non-moral (because the particular will is here coterminous with the natural will), the moral injunction to be self-determining imposes on the agent a demand of unnatural stringency. Specifically, the agent must renounce enjoyment of life as its motive for acting morally; it must will the universal law disinterestedly, purely for the sake of respect for the law.<sup>88</sup> An act done in conformity with moral duty but motivated, even partly, by expected advantage is, for Kant, a non-moral act. It carries no moral merit. So, given the hard dichotomy between acting morally and acting self-interestedly, any unity of duty and inclination such that the

individual performs his duty for the joy he feels in doing so, necessarily destroys the moral character of his action. Acting dutifully would then be reduced to a means of satisfying natural self-love. The perfect molding of inclination to duty would be indistinguishable from the collapse of morality into natural inclination.

Nevertheless, that perfection is just what Kant calls the highest good.<sup>89</sup> While virtue is the logically prior good, virtue attended by happiness is the complete good. Moreover, he says, the complete good's realization is a moral necessity, for a moral law hostile to self-interest under any conception thereof (even to a happiness of which the individual is morally worthy) could not be autonomously willed by a rational being.<sup>90</sup> Accordingly, the perfect conforming of inclination to the universal will (i.e. the synthesis of virtue and happiness) is both practically necessary for a rational being and impossible for a natural one. That consummation must therefore be conceived as the goal of an endless striving.<sup>91</sup> The possibility of morality requires that the goal of morality not be achieved.

Now the moral pursuit of a goal whose attainment one knows would destroy morality and from which the moralist must therefore recoil seems irrational. Why aim at a moral good whose attainment would signify moral corruption? So, to give sense to moral self-discipline, Kant postulates a non-contradictory harmony of duty and happiness conceived objectively as a final purpose of the world – as the end toward which nature as a whole is directed and that our moral actions further.<sup>92</sup> This, however, is a figment of thought – a device of reason needed to make sense of moral endeavor but that doesn't change the reality facing the moral agent. For it, the natural will is a fixed reality; there is no transcending it. Therefore, the particular will is the natural will. To conform it to the universal is thus to sink the universal in the natural. So the individual's endless moral task is to unite what must never be united in the hope that the world is constituted differently from the one that required morality to be a solitary affair in the first place.

Now Hegel shows with devastating effect how the pursuit of this mirage leads the moral agent into a web of dissimulation which, were it conscious, would amount to hypocrisy – that is, to immorality. For example, the particular will, having been equated with the natural will, is on the one hand said to be non-moral in contrast to the pure will such that no motive of enjoyment is allowed into moral action. On the other hand, Kant knows the particular will to be essential to the notion of *fulfilled* duty, for it is the particular will that, in testing its maxims by universalizability, conforms itself to the pure will. He also knows that the particular will's involvement in moral action necessarily engages the individual's passion for morally principled action. Since, however, it has been equated with the natural will, the particular will in this morally necessary sense must be displaced or projected onto a non-actual and merely postulated holy will, in which is reconciled the antagonism between the universal and the particular will that, for the natural agent, remains unreconciled.<sup>93</sup>

So there is an equivocation here on the moral status of the particular will. It is acknowledged as essential to fulfilled duty, but this admission is not allowed to revise the initial equation of the particular with the natural will that made morality so repressive of passion. Correspondingly, the individual, for whom the natural will is fixed, must consider itself unalterably impure, and yet he must be permitted to regard endless progress toward morality as sufficing for morality because moral perfection would destroy the moral character of his actions!<sup>94</sup>

#### 7.4 *Inactive Goodness and Active Evil*

A post-Kantian morality that Hegel calls “conscience” has ceased this equivocating. Accepting the fusion of duty and inclination as the truth about its own moral action, conscience lets evaporate the displaced fusion postulated by Kant. For it, the universal will is actual only as specified in concrete situations by an agent inwardly certain of the moral purity of its particular will insofar as it particularizes the universal through judgment. Kant’s holy moral legislator has thus come down to earth. The conscientious agent believes that its intuitions and judgments in particular cases are the universal will’s applications, and his belief is confirmed by other conscientious actors’ recognizing his judgments as determinations of the good.

In conscience, therefore, the natural ego liberated from the *polis* has attained a level of cultivation above that achieved by the Enlightenment. The individual ego no longer considers itself fixed in its natural immediacy and isolation; nor is the universal ego considered authoritative in opposition to the particular ego. Instead, the truth about both is their mutual dependence and complementarity. The universal ego is genuinely universal only in being spontaneously recognized by the individual as its good; the individual ego comes to its essential nature and dignity as the medium for the universal’s realization – a role it enjoys, for it is fulfilled therein. This means that the individual’s particularity is no longer coterminous with his natural and accidental existence; it has a rational dimension as a necessary conduit for the determination and realization of universal freedom. Again, therefore, the conception of humanity’s essential nature has changed and with it the idea of the exemplary human being. The Enlightenment’s picture of humans as clever animals self-restrained only by long-run rational advantage and for whom obligatory laws of freedom are inherently artificial and repressive is superseded. Human nature is once again an excellence, though no longer one external to, and impossible for, the individual ego. Achieving it requires shedding one’s immediate particularity and becoming the particular ego that universal freedom requires for its determination.

The new moral outlook changes the way the moralist comports himself to the state. Whereas Kantian ethics accepted a division of the universal will’s authority into its external authority as a state and its internal authority as a private morality, conscience rejects this division. For it, there is only one authority. Having ceased to identify the particular with the natural will, conscience no

longer regards the state's external and legally untrammelled force as justified. For it, human nature is fulfilled in moral self-legislation, and its heteronomy in the state contradicts that nature. Because, however, the individual's moral self-legislation is incompatible with *any* state authority, conscience does not try to reform the state into one in which it can live. Instead, it withdraws from the state. What it withdraws into is a contingent matter; Hegel has it forming a circle of literary anarchists composed of German poets, novelists, and essayists of his day – Hölderlin is there, perhaps also Jacobi. To each other they declare that no positive law can be binding on them just in virtue of its having been commanded by a political sovereign. Rather, that law is alone valid for the moral conscience which the conscience prescribes for itself.

At this point, however, the conscientious moralist has no criterion for determining the good other than his own inner conviction of purity. Insofar as he acts from a conviction of duty, he says, his action constitutes a valid determination of the universal will. But since subjective conviction can justify any action whatever, even one that the public law calls murder, morality has no content but what is supplied in the situation by the individual's idiosyncratic – that is, natural, will. Far from realizing itself in conscientious action, therefore, the universal will disintegrates therein.

It follows that the circle of conscientious moralists cannot recognize the moral validity of action. Because action pursuant to a private view of what the good requires puts the natural will back in the driver's seat, it is wicked irrespective of its content. All that the society of moralists can recognize is the individual's verbal assurance of his moral sincerity and then only if the assurance is unaccompanied by deeds; for if action isolates the individual, engaging his idiosyncratic will, speech unites him with humankind just by setting aside what is particular about him. And yet, since conscience originally affirmed the unity-in-difference of the universal and the particular will, this conflict between inactive moral purity and active evil masquerading as purity is really a conflict within morality between two forms of conscience, each an ideal type of the autonomous human being.

One of these paragons withdraws from performing good deeds in the world into a reclusive life spent communing with its pure ego and writing. What it writes is an autobiographical "confession" in which it presents its particular life as the consummate human life. This is the "beautiful soul" depicted in Goethe's *Wilhelm Meister* and in whose confession Hegel saw his friend Hölderlin. The other form of conscience combines action in the world with professions of moral righteousness and sincerity, which assurances the beautiful soul judges hypocritical as concealing selfish motives. We can see that conscience breaks up into these opposing ideals of humanity because of its stance toward the post-revolutionary state as thus far developed. Having rejected state authority as the inherently threat-backed and unaccountable sovereignty depicted by Kant, conscience has no source for law besides its resurgent natural will. Having with historical justification equated submission to state authority with heteronomy,

it sought autonomy in a private law-making that put its subjective will above the law of the state. It could thus either act wickedly while proclaiming its goodness or lead a life of inactive purity.

### 7.5 The Pre-Philosophic Mediator

Conscience thus seems at an impasse. It was the historical incompatibility of state authority and autonomy that forced conscience to seek moral independence in a private law-giving. Yet just this rebellion against state authority has reproduced the state's opposition between universal and particular wills within morality. The one possibility for advance would be for conscience to perform its moral work *within* the post-revolutionary state so as to remove the conditions that led Kant to give the *Rechtsstaat* the form of a *Machtstaat*. I have in mind here the distinction Hegel draws in the *Philosophy of Right* between *Moralität* and *Rechtschaffenheit*, the latter translating as honesty or rectitude.<sup>95</sup> *Moralität*, we've seen, is the virtue of the solitary agent who assumes the task of specifying and actualizing the universal law or good of mankind. By contrast, *Rechtschaffenheit* is the more modest virtue of the peer-group member. It consists, mundanely, in a disposition to govern oneself by the customs and expectations embedded in one's occupational role in civil society and to advance the welfare of that occupational grouping. Mundane or not, such a virtue would, by giving civil society's private sector the benefit of conscience's moral cultivation, soften the opposition in political life between the universal and the particular will, rendering the latter moral rather than natural. In doing so, it would also advance the conditions needed for conscience to find its demand for moral independence satisfied within the state – for example, in constitutional guarantees of (suitably limited) freedom of conscience and expression and of the right to political and legal judgments the mind can accept because they have been reasoned out from just principles and laws.

However, all this is easier said than done. With conditions as they stand, what will induce conscience to renounce a universalistic but private morality for a limited but social one? Given the present externality of state authority, what will reconcile the morally ambitious conscience to the modest rectitude of the job-holder? And given the moralist's present demand for absolute freedom of conscience, how can the state accommodate conscience and survive? Nevertheless, the appearance of a conciliator between state authority and conscience now seems to be a precondition for the timeliness of the *Phenomenology* and of its practical – ladder-handing – intervention.

A question now arises as to whether the appearance of such a conciliator would render the *Phenomenology* superfluous in a practical sense. If this book's thesis regarding the *Phenomenology*'s transformative role is to stand, the historical conditions that make it timely must be such as to render it still necessary to the historical consummation presupposed by the *Encyclopaedia*. But now the fulfillment of this desideratum appears threatened by philosophy's need for a pre-philosophic mediator to reconcile the poles of conscience to each other

in the state. After all, what could this mediator be if not Spirit? Certainly, it would have to be a Whole that, independent of either extreme of conscience, involved both as mutual complementary elements. Were it not independent of conscience, it could not reconcile conscience to the objectively existing state; were it not also to involve conscience, it would be the object of a self-alienating and self-erasing commitment at once incompatible with autonomy and incapable of reconciling conscience to the state. But if the requisite mediator is a transcendent-immanent Spirit, then the accomplished mediation would be realized or absolute Spirit, in which case philosophic knowledge would be left without practical function. Here, at any rate, is a criterion by which to test our thesis. The *Phenomenology* is necessary in a practical sense only if the supersession of *Moralität* in and through a Spirit grasped non-philosophically is still an imperfect manifestation of Spirit; only, that is, if this manifestation leaves intact the conflict in the state between the universal and the particular will even as it prepares this conflict for philosophic mediation.

If philosophy requires a pre-philosophic mediator for the extremes of conscience, the time is now ripe for what is needed. Since the downfall of the *polis*, the potential unity of the universal and the particular will has been a primordial potentiality – something certain for Hegel but not for the historical actors he is observing. This is no longer the case. With the emergence of conscience we have a type of consciousness for which Hegel's certainty is its own. For the poles of conscience themselves, each side notionally contains the other, so that their complementarity has become a present potential. Each is an identity-indifference of universal and particular wills where each is dominantly one of the poles and latently the other. The beautiful soul is dominantly the universal side, the active conscience dominantly the particular; but each also purports to have the other's dominant side within itself. No longer mutually exclusive and indifferent, therefore, each rather points to the other for its own completion. Each now self-consciously requires the other in order to become fully what it inherently is.

Their awareness of mutual need comes about through the inner contradiction both suffer in their mutual isolation. As a form of conscience, the beautiful soul is implicitly the universal good expressed in moral action. As a beautiful soul, however, conscience is mere speech and judgment devoid of action. Its self-contradictoriness manifests itself, therefore, as the hypocrisy "which wants its judgment to be taken for an *actual* deed, and instead of proving its rectitude by actions, does so by uttering fine sentiments."<sup>96</sup> The active conscience too is hypocritical and self-consciously so. His is not, however, the hypocrisy of which he is accused by the beautiful soul and which turns on the supposed reducibility of his good deeds to selfish motives – to a desire for fame or honor; for conscience is precisely that moral attitude which denies the antithesis between virtue and happiness. Rather, the hypocrisy that the active conscience himself acknowledges consists in the contradiction between his professed virtue and his actual arrogance, between the assurances of his acting for the universal good

and his putting his subjective will above the public law so as to make a universal good impossible. The incompleteness of both poles in their mutual separation negates the pretensions of each to self-sufficiency and reveals their true essential nature as the Whole which, in its independence of either extreme taken separately, contains both as mutually essential parts. This bi-personal nexus or identity-in-*otherness* of universal and particular wills is Spirit.

As during the Roman Empire, however, the ripeness of the time for Spirit is not yet its ripeness for the philosophical grasp thereof. For Hegel, Spirit is a divine-human unity in the following sense. As a bi-personal nexus between a universal ego and a separate individual ego, Spirit unites what no human ego (individual or collective) can. Spirit is thus distinct from the human ego and in that sense transcendent thereof – a divinity. Yet Spirit is not external to the human ego. As the latent unity of humanity's two sides (collective and individual) that for humanity are disjoint, Spirit is the intermediate whole between the extremes toward which both are by nature moved. Thus, Spirit's bi-personal nexus manifests itself in the individual agent's lack-filling movement toward (what it thinks is) its essential worth in a collective unit as well as in the supposed essential nature's realization as a recognized civil authority; and it (the nexus) develops from latent to explicit wholeness through the series of human civilizations whose lawful rises and falls Hegel has given us to understand. So, for Hegel the philosopher, Spirit is at once transcendent of, and immanent in, human self-activity. As transcendent, its law of complementary opposites is the objective law of reality or what Hegel calls the "substance" of reality; but as immanent, this natural law involves the human subject in its realization. So Spirit is at once substance and subject, and it is the inward or conceptual unity of these elements; for Spirit would not be the law of reality were reality not manifestly conformable to Spirit.

The Spirit that has now come to sight, however, is not a *unity* of substance and subject. It is rather a substance-subject, transcendent-immanent *duality*. Because the opposition between universal and particular wills was still intractable in post-revolutionary civil society, Spirit's transcendence of human agency took the form of its externality vis-à-vis political life as such; the bi-personal unity for which the time is now ripe is an externally given fact accomplished without humanity's participation. So we still have a faith-based rather than a philosophic grasp of Spirit. However, because the potential for unity was indeed present in the opposition between the poles of an apolitical conscience, Spirit was recognized not merely as a revealed *fait accompli* but also as being immanent in the intellectual attraction between finite human egos. Accordingly, the Spirit grasped by conscience was at once immanent in, and transcendent of, human agency, but because transcendence retains the significance of externality, Spirit is here the duality rather than the inward unity of these elements. In that Spirit is external to human agency in political life, conscience, in recognizing it, turns Christian rather than philosophic. In that Spirit is recognized as immanent as well as external, the Christianity it accepts is Protestant.



Certain, then, of its dignity in Spirit and conscious of its hypocrisy outside it, the active conscience now confesses its evil. Accepting the post-revolutionary human rights state as God's presence in human agency, it renounces unilateral lawgiving and takes as the content of virtue the public law of the land and the duties pertaining to its social role. This done, the beautiful soul also relents. It cannot persist in its condemnation of individualistic moral action without succumbing in madness to the tension between its desire to remain unstained by action and the necessity it feels "to externalize itself and change itself into an actual existence..."<sup>97</sup> It need not do so, because the active conscience now acknowledges the authority of the human rights state, whose laws of equal freedom it peremptorily obeys as comprising the public content of the universal good.

Accordingly, the confession of the active conscience is now met by the forgiveness of the judging one. This means that the beautiful soul now too accepts the state as the proper forum for its moral work, taking up the role within it that consists in regulating the free enterprise of private actors in accordance with the common good, but otherwise leaving it free. Thus the private conscience of the beautiful soul becomes the professional conscience of the modern public servant. The latter accepts private enterprise as moral work in which a providential reason is present, while rendering it congruent with the public interest; no longer is such activity viewed as inherently an expression of natural egoism. The community thus formed between the poles of conscience is Spirit embodied in world history's second ethical life. It is absolute Spirit – Spirit returned to itself out of its self-opposition in post-Greek history.

## 8 The *Phenomenology* as Mediator Between Public Duty and Private Right

Was Spirit's realization in the mutual recognition of the poles of conscience adequate to the nature of Spirit? If so, Spirit's internal history is complete, and the *Phenomenology* is an afterthought to a world history consummated without it.<sup>98</sup> What is left for philosophy is simply to grasp in thought the identity-in-otherness of universal and particular wills already achieved in political life and to interpret history in the light of this latent nexus.

However, the embodiment of Spirit resulting from the previous interaction was not adequate to Spirit's nature, nor is the *Phenomenology* without practical function. As the Spirit grasped by conscience was dual in nature, so too was the ethical life in which Spirit was realized. The parts of this duality are church and state. Spirit is fulfilled partly in religious life and partly in political life. In religion, Christians passively accept the reconciliation of the eternal and finite egos as a revealed fact accomplished without human insight or contribution; in the modern state, humanity itself strives to reconcile them, self-consciously regulating individualistic enterprise in accordance with the idea of universal freedom.

Yet this duality in the mode of Spirit's fulfillment results in its shortfall in both spheres. Because the reconciliation accepted in religion is externally given to a passive community, Spirit's embodiment in the church is not self-conscious. Spirit cannot know itself in Christian worship as the law of reality because, where thinking is equated with the finite human understanding, it has no human thinker through whom it could know. Civil society has the opposite problem. Because human governance takes itself to be not-divine, the order it produces is externally imposed on a sphere of particularism characterized by dutifulness to peers but assumed to be indifferent to universal freedom. As a consequence, the reconciliation sought in civil society is never consummated; the laws of universal freedom embody an "ought-to-be" endlessly pitted against a naturally recalcitrant "is." So, in the church, Spirit obtains embodiment but without self-knowledge; in civil society, it is self-conscious but lacks embodiment.

The church-state duality poses a further problem not mentioned by Hegel but that has come to the fore in the contemporary world. That duality means that the concord between religion and secularism is vulnerable to disruption – for the following reason. Insofar as it is faith-based, the society directed to the most comprehensive human end must be a private association without coercive power, for the state must be directed to ends whose good is demonstrable to everyone. Conversely, the association with coercive power is directed to ends demonstrable to all but for that reason mundane and not fundamental. For religions for which mundane life is governed by a divine providence, this duality is not threatening to divine rule. But to a religion of pure transcendence, the duality is an affront to God's authority and so engenders a conflict between secularism and resurgent theocracy – between legitimate power aimed at mundane ends and tyrannical power aimed at comprehensive ends. In this conflict, each side carries a value lacking in the other, and so the conflict seems intractable.

However, the church-state duality is now, as a matter of historical fact, potentially overcome – or so Hegel believes. Not in a faith-based theocracy or a civic humanism does he believe it is potentially overcome, but in a synthesis of church and state that is neither and both. Let us try to understand this.

In pre-revolutionary Europe, the chasm between religious and political life was unbridgeable because the antithesis in political life between selfless devotion to the common good and individualistic self-assertion was itself intractable. The harmony of public duty and private right had to be imagined as an otherworldly utopia. Now, however, the opposition in civil society between the universal will's sovereignty and the individual will's freedom is no longer inflexible. In the reconciliation between the extremes of conscience, each side desisted from rebellion against a threat-backed civil society of prudent animals and accepted it through Protestantism as a site worthy of its moral activity.<sup>99</sup> As a result, civil society has changed. In his private life, the model individual is no longer the *bourgeois* who pursues a selfish interest with indifference to others, who needs the threat of sanctions to deter him from law-breaking, and whose enterprise must be suffocated by a distrustful bureaucracy if the universal will is

to rule. Rather, the model individual is now a “conscience” who obeys the law for the sake of everyone’s good and who belongs to an occupational association that autonomously performs welfare functions for its members. On its side, the universal will’s agent neither terrorizes the particular will under a Jacobin tyranny nor smothers its activity under a blanket of tightly woven bureaucratic rules. Confident that individuals on the whole pursue their self-interest within associations that care for their members, government now allows the particular will autonomous expression while regulating it externally and non-intrusively in the public interest.

To be sure, public and private sectors are still mutually external and opposed. As sectors of a *human* order, they cannot be otherwise. But because each side now implicitly involves the other, both are, in their mutual separation, consciously self-contradictory and so consciously needful of the other’s recognition. In its opposition to private associations, the supposedly universal will is actually the particular will of governing elites. As such, it is distrusted by private sector actors, whose corporations, formally shut out of government, always threaten to capture it informally. Inherently ethical units, corporations are, in their preoccupation with their narrow interests, still natural wills rather than “consciences.” So, to be actually what it is inherently, each side consciously needs the other to acknowledge it as part of the other. The universal’s agent requires that, without becoming public servants, private agents regulate themselves in accordance with universal freedom; and private agents require that the universal will accept public-minded private interests into its own structure of governance.

However, the potential complementarity of public and private sectors means that the reconciliation of the universal and the particular passively received in religion is now *de facto* potentially one with the reconciliation accomplished by humanity. This potential marks the timeliness of the *Phenomenology of Spirit*. Grasped in thought, the inherent unity of substance and subject, transcendence and immanence, is just Spirit knowing itself as the law of history in and through Hegel’s *Phenomenology*. Further, the *Phenomenology* is the one thing still needed to render actual the reconciliation between religion and politics that is now historically a potential. It is needed because, humanly speaking, the public and private sectors of civil society are mutually external; no human self-consciousness can encompass both without reducing one to the other, either in a totalitarianism of the universal will or in a government become the executive committee of the wealthiest. The sectors are united in the shape in which they now exist only in the theistic Spirit that embraces both as mutually essential elements and whose reality the *Phenomenology* publicly demonstrates. At this point, however, the *Phenomenology* is the *only* thing needed, because the primordial reconcilability of the extremes hitherto assumed by Hegel is now their reconcilability in fact for historical actors. Nothing remains but for each side to accept the other through the philosophic mediator that preserves both and to institutionalize their union.

Accordingly, the *Phenomenology* – the self-knowledge of Spirit as the law of reality – is the middle term between the public and private sectors of civil society, on the one hand, and between church and state, on the other. As the mediator between the poles of civil society, it ensures that each side can recognize the other without self-loss. Private interests can will the universal without loss to their independence because, in Spirit, the universal makes room for the determinate ego, whose spontaneous recognition it requires. For its part, the universal will can incorporate private associations without corruption because the particular will now aims at the universal good as the basis of its own private rights. As the mediator between church and state, the *Phenomenology* is that through which, by that mutual recognition of *human* actors, an earthly Kingdom of God comes into existence. The vision with which Hegel concluded his Frankfurt essay also concludes the *Phenomenology*: having the same object, religiosity and patriotism merge in a middle that is neither otherworldly nor simply mundane.<sup>100</sup>

Accordingly, through the mediation performed by the *Phenomenology*, agents of the public and private sectors of civil society accept each other as complementary parts of one State. They do so now in the knowledge that their mutual acceptance is a divine Spirit's self-actualization through them. So they know they are climbing from a civil society in human time to a State that completes divine-human history.<sup>101</sup> They also know that their action completes the organic self-development of the Greek *polis* – that it restores Greek wholeness out of its self-splitting in history but now enriched with rights of personal liberty and moral independence. So they know that the State their mutual recognition brings into being is not strictly a modern state. Certainly, it is not a return to the Greek; but neither is it a modern human rights state as opposed to an ancient virtue state. It is rather a synthesis of both in something new – a union of Athens and Paris, one might say; or Athens, Paris, and Jerusalem. Only now is genuinely systematic and circular knowledge possible; for “not until Spirit has completed itself objectively, completed itself as a world-Spirit, can it reach its completion as self-conscious Spirit.”<sup>102</sup>

## 9 Timely or Premature?

The foregoing exposition of Hegel's philosophy of history has gone some distance toward confirming our thesis regarding the *Phenomenology of Spirit's* practical function as well as toward discovering the historical conditions needed for it to perform this role. If that exposition is correct, then we have to reevaluate some traditional views of the role Hegel's philosophy plays in the world history it comprehends. In particular, we must reject Marx's judgment that Hegel's philosophy seeks to reconcile in thought the antagonisms that remain unreconciled in reality or that he reclaims through thinking alone the humanly created world that remains estranged from humanity in fact. We must also reject the view of Kojève and others that Hegel's philosophy

comprehends a world history complete without it and whose completion is the modern human rights state. Against both views, this chapter has shown that Hegel's *Phenomenology* understands itself as a bridge from the human rights state of modernity to the Greco-modern State that completes divine-human history. It has also shown that, when it appears, the *Phenomenology* is the last thing needed to enter this State, inasmuch as the potential unity it grasps in thought is already present in the public culture of modernity in the shape of a society-changing accord between Protestantism and a post-Kantian morality of "conscience." This accord, judged by Hegel to exist in his time, constitutes the timeliness of the *Phenomenology's* intervention.

The obvious question that arises is whether Hegel's historical judgment was accurate then or would be now. Issues of the utmost philosophic importance are at stake here. We know, for example, that Hegel's philosophy of the state is avowedly descriptive rather than prescriptive. Philosophy, he writes in a well-known passage, "must be removed as far as possible from any attempt to construct a *state as it ought to be*."<sup>103</sup> Rather, its task is simply to comprehend the rationality of what is. Nevertheless, to the extent that Hegel's philosophy is premature, it will, in setting forth its historical preconditions, indeed become – contrary to its own intentions – prescriptive. It will, moreover, be prescriptive in a very awkward manner, because its prescriptions will be offered in the context of a purely descriptive and reconciled philosophy, as if what is already possessed the features of what is yet to be. Its effect, in other words, will be artificially to invest the contemporary reality with a potential for rationality as yet lacking to it, and so it will appear to accord this reality more dignity than it deserves. Indeed, it will be open to the accusation of having absolutized a historically contingent state of affairs and of having falsified rather than understood reality.

Nor is this the only awkwardness to which a premature Hegelianism will be exposed. All the fragile harmonies that depend on the times being ripe for Spirit would shatter into rigid dichotomies. For example, the compatibility of an historical relativism for which all philosophy is the thought of its time with the realization in time of an absolute law of reality would become the antithesis between a historicism leading nowhere and an ahistorical natural law. The compatibility of a philosophical surrender to what is with a critical reason able to distinguish between what is and what is real would become the antithesis between a positivist acquiescence in the given and a critically detached idealism. The fact that these break-ups actually occurred in the post-Hegelian era – in the opposition between right-wing and left-wing Hegelians and between historicists and natural lawyers – certainly indicates that Hegel's historical optimism was unfounded.<sup>104</sup> Moreover, even if it was well-founded then, the two centuries since have witnessed the severance of whatever concord existed between humanist politics and religious faith in the successive attempt by each to occupy the space formerly reserved for the other. Whether or not Hegel's historical optimism would nevertheless be justified now, and whether or not historical

optimism is required for Hegel's ontological optimism, will be easier to decide once we have determined the meaning of Spirit's timeliness in terms of definite social and political institutions.

Yet another purpose will be served by such an investigation. One shortcoming of the argument so far was its reliance on a section of the *Phenomenology* that, as the most enigmatic, defies confident interpretation. I refer, of course, to the concluding chapter on "Absolute Knowledge." Because of Hegel's vagueness in this chapter (a vagueness no doubt ascribable in part to the lack of historical material), we were compelled to seek clarification from passages in his later works, particularly the *Encyclopaedia*, the *Philosophy of Right*, and the *Lectures on the Philosophy of History*. Only when read together with these (and especially with paragraph 552 of the *Encyclopaedia*) passages does the transition in the *Phenomenology* from "Conscience" to "Religion" become plausibly a move to an objective civil order viewed as a manifestation of divine providence. Otherwise, one must admit that, after the chapter on the French Revolution, there is no further unambiguous reference in the *Phenomenology* to social and political life. This means that, in the *Phenomenology* at least, there are no firm textual grounds for supposing, as we have done, that the transcendence of "conscience" affects the character of political life so as to render it ripe for philosophical elevation. But with this in doubt, so is our thesis about the mediating role of philosophy. For the possibility then exists that the tension in life between a reconciliation accepted by religion as accomplished apart from humanity and one incompletely produced by humanity's one-sided moral work in the state must always persist, while their unification occurs in philosophy alone.<sup>105</sup> Were this the case, Hegel's philosophy would not be, as I claim, a bridge from one form of polity to another. It would not assist a transition from the finite state of human temporality to the eternal one that completes divine-human history.

Accordingly, this book's thesis concerning the philosophy of Spirit's transformative function requires further proof. That thesis is alone decisively confirmed when it is shown that, for Hegel, the modern state is potentially whole, rational, and just, requiring only philosophy to become actually so. But that the modern state is implicitly rational is precisely the claim of the *Philosophy of Right*.

## Notes

1 Phen, p. 52.

2 Phen, p. 54.

3 For this criticism see Horst Ottmann, *Das Scheitern einer Einleitung in Hegels Philosophie*, pp. 152–4, 185–97.

4 Phen, p. 55.

5 Here I adapt Hegel's description of dialectical method in the *Phenomenology's* introduction so as to make it a description of the method followed throughout the work, not just in the science of the experience of consciousness.

- 6 Phen, p. 51.
- 7 Phen, p. 56.
- 8 *Phän*, p. 24 (Phen, p. 17). The phrase in square brackets is Hegel's revision; see the variants at *Phän*, p. 24.
- 9 Phen, p. 266. Hegel's philosophy of history commences with ancient China and India, in both of which nations consciousness, not yet self-active, is still immersed in the biosphere. But Hegel remarks that, because of their subjection to nature, these nations "lie, as it were, still outside the World's History, as the mere presupposition of elements whose combination must be waited for to constitute their vital progress." See PH, p. 116.
- 10 Phen, p. 418. Cf. PH, p. 234 ff.
- 11 Phen, pp. 237–52.
- 12 Phen, pp. 242–52.
- 13 Phen, pp. 264–6.
- 14 PH, p. 120 ff.
- 15 PH, pp. 144–50.
- 16 PH, p. 215.
- 17 *Phän*, p. 455 (Phen, p. 421).
- 18 Phen, p. 424.
- 19 Phen, p. 424; cf. PH, p. 219 ff.
- 20 Cf. PH, p. 253: "Of the Greeks... we may assert that they had no conscience."
- 21 Phen, p. 266.
- 22 Phen, pp. 267–8.
- 23 Phen, pp. 269–70.
- 24 *Phän*, p. 295 (Phen, p. 270).
- 25 Phen, pp. 272–3. Observe the difference between ancient and modern war as Hegel understands them. In Chapter 2 we saw that, for Hegel, modern war is an incomplete manifestation of divine-human Spirit, of the reconciliation between the universal and the separate particular will. It is incomplete because Spirit implies both the internal sovereignty of the universal and the distinctive worth of the particular, both of which are, however, exposed to the rule of superior force in war and international relations generally. By contrast, ancient war is a complete and adequate realization of *human* mind's sovereignty, the principle of Greek antiquity. The significance of ancient war is not that it harmonizes the universal and the particular will but that it manifests the priority of the one-sided universal vis-à-vis the natural individual, subduing the latter to the former.
- 26 *Phän*, p. 286 (Phen, p. 261).
- 27 Phen, p. 279.
- 28 *Phän*, p. 304 (Phen, p. 279).
- 29 Phen, p. 280 ff.
- 30 Phen, p. 280.
- 31 *Phän*, p. 310 (Phen, p. 284).
- 32 Phen, p. 288.
- 33 Phen, p. 288.
- 34 Phen, p. 288.
- 35 *Phän*, p. 315 (Phen, p. 289).
- 36 GPR, p. 14 (PR, p. 13).
- 37 *Republic*, II, 377b–III, 377c.

- 38 *Phän*, p. 315 (Phen, p. 289).
- 39 *Phän*, p. 304 (Phen, p. 279).
- 40 Phen, pp. 289–90.
- 41 A. Kojève, *Introduction to the Reading of Hegel*, pp. 31–74.
- 42 *Phän*, p. 316 (Phen, p. 290).
- 43 *Republic*, I, 330d–331b.
- 44 Phen, p. 117.
- 45 *Phän*, p. 319 (Phen, p. 292).
- 46 *Phän*, p. 317 (Phen, p. 291).
- 47 *Phän*, pp. 318–9 (Phen, p. 293).
- 48 *Phän*, p. 320 (Phen, p. 293).
- 49 *Phän*, p. 144 ff., 319 (Phen, p. 128 ff., 293).
- 50 Phen, p. 294.
- 51 Phen, p. 296.
- 52 So Hegel's view of the relation between politics and theism in the *Phenomenology* changed from the one he expressed in "The Spirit of Christianity and its Fate." There Hegel was a proto-F Feuerbachian on religion.
- 53 *Phän*, p. 349 (Phen, p. 297).
- 54 *Phän*, p. 322 (Phen, p. 295).
- 55 *Phän*, p. 327 (Phen, p. 301).
- 56 *Phän*, p. 328 (Phen, p. 302).
- 57 J. L. Austin, *How To Do Things With Words*, pp. 1–11.
- 58 Phen, p. 307.
- 59 Phen, p. 307.
- 60 Phen, p. 307.
- 61 *Phän*, p. 333 (Phen, p. 307).
- 62 *Phän*, p. 327 (Phen, p. 301).
- 63 *Phän*, p. 330 (Phen, p. 303).
- 64 *Phän*, p. 339 (Phen, p. 312).
- 65 Denis Diderot, *Rameau's Nephew and Other Works*, p. 35.
- 66 Phen, p. 320.
- 67 That this is generally true is evidenced by the marvelousness of the exception. Montesquieu's *Spirit of the Laws* stands out among the works of the French Enlightenment precisely because of its aspiration to be a positive political science where no others saw stable order or regularity. Yet even Montesquieu understands with a view to critical reform. Monarchies can be saved from the despotism into which they have fallen by preserving an honor system that attracts into public service those seeking distinction. Witnessing the decay of that system, Montesquieu seeks to revive it for the sake of an ideal of civic freedom that was never its own. Hegel viewed *The Spirit of the Laws* as a precursor of his own historically nuanced political science; see PR, para. 3.
- 68 Phen, pp. 328–9.
- 69 *Phän*, p. 365 (Phen, p. 337).
- 70 Phen, p. 342.
- 71 Phen, p. 355.
- 72 *Phän*, p. 378 (Phen, p. 348).
- 73 *Phän*, p. 378 (Phen, p. 349).
- 74 Phen, p. 356.



75 *Phän*, p. 389 (Phen, p. 359).

76 *Phän*, p. 390 (Phen, p. 360).

77 Phen, p. 360.

78 *Phän*, p. 390 (Phen, p. 360).

79 Phen, p. 362.

80 *Phän*, p. 391 (Phen, p. 361). For Hegel, all the embodiments of the natural ego's claim to end-status – private property, contractual rights, as well as the inequality of holdings generated from a private property regime – come back through Spirit because all are examples of Spirit's mutual recognition structure by which Spirit is confirmed as the matrix of valid worth claims out of the mouth of its other – the isolated person. So everything the natural ego loses to the abstract general will comes back through Spirit, though now limited by the system of Spirit's instantiations as a whole. For example, private property comes back but as limited by family obligations as well as by universal rights of welfare. Here, though, where the essential nature is the abstract general will – the self-determination of all – everything immediate and natural, everything established outside the general will is disestablished.

81 For Hegel's critique of post-revolutionary France's bureaucratic state, see HPW, p. 161 ff.

82 MM, 6:231–6:233, 6:235–6:236, 6:264, 6:307–6:308, 6:318–6:320.

83 MM, 6:307.

84 CPrR, 5:22.

85 MM, 6:212–6:214.

86 MM, 6:211–6:214; CPrR, 5:33.

87 MM, 6:214; CPrR, 5:71–5:73, 5:82.

88 CPrR, 5:72–5:73.

89 CPrR, 5:110.

90 CPrR, 5:110.

91 CPrR, 5:122.

92 CPrR, 5:130–5:131.

93 CPrR, 5:122–5:124.

94 The dissemblance thesis is one of two sides to Hegel's critique of Kant's doctrine of virtue. The other is the "empty formalism" thesis. This has two parts. First, Kant's categorical imperative cannot generate moral duties because its universalizability criterion is just the form of law divorced from content. But neither, secondly, can it test externally given maxims for their qualification to be a binding law because no maxim will contradict itself when universalized unless one arbitrarily assumes the validity of the institution the maxim threatens. For example, the maxim, "I may break a promise whenever doing so would be advantageous to my interests" would, if universalized, make contracts impossible. But the impossibility of contracts is a contradiction of something only if one presupposes the institution of contract independently of the test. Thus, the categorical imperative cannot constrain the arbitrary will; see PR, para. 135. Hegel does not consider Kant's alternative formulation of the imperative: So act that you treat humanity, whether in your own person or in the person of another, never simply as a means, but always at the same time as an end. But one can imagine him saying, "since that is the very principle that is concretized independently of moral discretion in the civil law, the moral thing to do is joyfully to obey the law knowing that is so."

95 PR, paras. 150, 207.

- 96 Phen, p. 403.
- 97 Phen, p. 406.
- 98 This is Terry Pinkard's view; see *Hegel's Phenomenology*, p. 331 ff.
- 99 PH, pp. 449, 456; PM, para. 552, PR, paras, 141, 270, 360.
- 100 See *Enz*, para. 552: "Only in the principle of Spirit, which knows its essence, which is potentially in absolute freedom, and which has its reality in the act of self-liberation, is the absolute possibility and necessity present for state power, religion, and the principles of philosophy to coincide in one, and for completing the reconciliation of reality in general with Spirit, of the state with the religious conscience as well as with philosophic knowledge."
- 101 Thus, the *Phenomenology* aims to found the civil religion Hegel vainly sought in his youth – one that mediates (in a state religion of a universal God) Rousseau's conflict between Christianity's otherworldly religion of a universal God and paganism's state religion of a parochial god; see J.-J. Rousseau, *The Social Contract*, pp. 110–5; Ronald Beiner, *Civil Religion*, pp. 1, 6, 11–16. Of course, Hegel's philosophy, perhaps contingently, lacks a key requisite of a teaching that would found a civil religion: wide accessibility. Still, Hegel hoped that the general public would gradually become receptive to his ideas, which might thus noiselessly permeate the public culture; see Phen, pp. 44–45; John Toews, *Hegelianism*, pp. 73–74. For the possibilities of faith-based religion as a civil religion see PM, para. 552, PR, para. 270, and my comment thereon in Chapter 5, n.118.
- 102 Phän, pp. 525–6 (Phen, p. 488). Judith Shklar's reading of the *Phenomenology* as a lament for the loss of Hellas misses the extent to which the work marks Hegel's break-out from the politically dangerous nostalgia of his early writings; see *Freedom and Independence*, pp. 84–95, 208.
- 103 PR, p. 15.
- 104 For discussions of this break see K. Löwith, *From Hegel to Nietzsche*, pp. 135–72; William Brazill, *The Young Hegelians*, pp. 29–70; and Toews, *Hegelianism*, pp. 203–54.
- 105 This is the position of E. L. Fackenheim; see *The Religious Dimension in Hegel's Thought*, p. 209 ff.

## PART III

# INSTITUTIONAL PRECONDITIONS



## The Reasonableness of What Is

[T]hat the worldly [S]pirit, i.e. the state, is only a finite spirit, is a one-sided view, for actuality is not irrational. Of course a bad state is worldly and finite and nothing else, but the rational state is inherently infinite.

PR, para. 270A

The principle of modern states has prodigious strength and depth because it allows the principle of subjectivity to progress to its culmination in the self-sufficient extreme of personal particularity, and yet at the same time brings it back to the substantial unity and so maintains this unity in the principle of subjectivity itself.

PR, para. 260

### 1 Notion, Ethical Idea, Spirit

#### 1.1 *Hegel's Bow to the State*

"This book," declares Hegel of the *Philosophy of Right*, "...is to be nothing other than the endeavour to *apprehend and present the state as something inherently rational*."<sup>1</sup> It will not, he warns, erect a standard by which to measure and instruct the actual state, but will instead bear witness to the rationality already implicit within it. "To comprehend *what is*," he writes, "this is the task of philosophy, because *what is*, is reason."<sup>2</sup>

Statements like these have earned Hegel a reputation in some liberal circles for servility to *de facto* authority. In its crudest form, the indictment alleges that, by equating "what is" with reason, Hegel meant to identify the Prussian state, his employer, with the ideal state – the state in perfect accord with the Idea or normative model of the state.<sup>3</sup> We need not spend much time on this accusation. Others have shown it to be baseless, and refuting it requires no complex philosophical argument.<sup>4</sup> A simple comparison of Hegel's constitution with that of the Prussia of his day will do. Anyone making this comparison will find that

Hegel's constitution liberalizes to a considerable degree the emerging Prussian *Beamtenstaat*, which, under the French-inspired reforms of Karl vom Stein and Karl Hardenberg, had already limited the Crown's power by a law-governed, merit-based, and tenured bureaucracy. To this constraint Hegel adds a bicameral legislature whose lower house is elected and whose consent is required for laws, a civil code based on the equal freedom of persons, a partially privatized administration limiting the reach of the central bureaucracy, a principle of legality requiring fair notice of law and forbidding extra-legal force, individual rights of due process in civil and criminal trials, and a guarantee, circumscribed by the constitution as a whole, of free speech and a free press.<sup>5</sup> Of course, the monarchy remains, but with all these limitations on its prerogative in place, Hegel's monarch has nothing to do but to sign off on bills passed by his Council-in-Assembly, just as the British and Danish monarchs do today.<sup>6</sup> Apparently even so progressive an absolute monarchy as the Prussia of vom Stein and Hardenberg was still behind the times judged by Hegel to be "inherently rational."

Perhaps, however, Hegel is more fairly accused of having fixed into eternity, if not specifically the Prussian state, then the model of the modern state.<sup>7</sup> This, without Marx's negative judgment, is the view of Alexandre Kojève, for whom Hegel's history-ending state is the *bourgeois* state ordered to human rights, each one an interchangeable copy of the universal, homogeneous state of humans who recognize each other as free and equal.<sup>8</sup> It is also the view of Leo Strauss, who, accepting Kojève's reading, disdainfully equates Hegel's model state with one in which, all self-transcending action being over, humans become satisfied brutes.<sup>9</sup> Finally, it is the thesis of Shlomo Avineri, who argues that Hegel's state is an ideal type of the emerging modern state – one whose problems with poverty and class conflict Hegel identified with the shortfall from full freedom of political life as such.<sup>10</sup> The textual support for this reading is stronger than that for the Prussianist one, but it too, I shall argue, is mistaken. Let us begin with the preface to the *Philosophy of Right*.

That Hegel intends to eternalize an existing type of state might be inferred from statements he makes against unmethodical thinkers of his day who reject what is given for what is true but offer up only competing party opinions of what is true. Like them (Friedrich Jacobi and Jacob Fries are the targets), Hegel distinguishes between insight and the given legal order as the standards of right for the philosopher and the ordinary citizen, respectively. But in contrast to them, he denies any discordance between the two standards. His own philosophy, he points out, will not subvert the current prejudice about right but will rather justify the content of that prejudice to free thought. After all, he writes,

the *truth* about *right*, *ethical life*, and the *state* is as old as its recognition and formulation in public laws and in public morality and religion. What more does this truth require, insofar as the thinking mind...is not content to possess it in this [ready-to-hand] fashion...? It requires to be *grasped in thought* as well; the content which is already rational in itself must win the *form* of rationality, so that it may appear justified to free thinking.<sup>11</sup>

This certainly sounds as if Hegel is about to put reason's seal of approval on a historically given type of legal and political order.

However, it is what Hegel says against Jacob Fries that seems most disturbing for philosophy's critical integrity. The fact that Fries espoused an obscurantist ethics that made agreement with feeling its criterion of moral and legal validity cannot by itself justify Hegel's statements; for the latter bear implications that, on the surface at least, strike not only at decadent philosophy but at philosophy as such. Hegel analogizes Fries's ethical subjectivism to that of the ancient Sophists. But in contrast to Socrates and Plato, Hegel does not attack the Sophists of his day in the name of a critical thinking of a profounder kind; he attacks them in the name of the state. He seems to take the side of Athens *against* philosophy. So, mocking his opponents' perplexity in distinguishing between the valid and invalid in positive law, he tells them to cling to "the commands of ethical life and the state" and to regulate their lives by them.<sup>12</sup> The right of free thought, he says, "is perverted into wrong...when it diverges from what is *universally* recognized and valid and when it has discovered how to invent for itself something *particular*."<sup>13</sup> Hegel is even willing to countenance "police action" against scholars who, by propounding subversive doctrines, abuse the trust government has shown in granting them academic freedom and who thus refuse to learn that "philosophy with us is not, as it was with the Greeks...pursued as a private art, but has an existence...especially, or even only, in the service of the state."<sup>14</sup> What in heaven's name is going on here?

Hegel's frequent allusions in the preface to Plato's *Republic* should not distract us from his highly unusual – I would say unprecedented – view of political philosophy's vocation. Clearly implied by his polemic against Fries is an inversion of the classical order between political philosophy and the existing state-type. No longer will political philosophy erect a model of a just state for existing states to follow or approximate; instead an existing type of state will evince the model of justice for philosophy to elucidate. *Hic Rhodus; hic saltus*. Political philosophy must, Hegel says, bring out the reasonableness of the objectively given civil order rather than judge or instruct it, just as the natural sciences bring out the regularity and harmony in the natural order. Accordingly, if political philosophy begins with Socrates's doubting the identity of the given state with the just state, it ends (or so he tells us) with Hegel's suspending philosophical doubt if not with putting all doubt to rest.

There is no point in trying to explain away Hegel's siding with state authority against critical thinking in his preface to the *Philosophy of Right* – for example, by reading it as an attempt to lull the censor. Explaining *away* explains badly, for it turns a distinctive feature of Hegel's general philosophy into an accident. An interpretive surrender to the social world confronting the thinker belongs to the essence of Hegel's philosophy, distinguishing it (as we saw in the *Phenomenology*) from the succession of critically detached outlooks that, beginning with Socrates, belong to humanity's exile in history. In Hegel's view,

critical detachment distorts the nature of Right. Presuming the fixed reality of the detached ego, the critical philosopher equates the determinate ego with the ego detached from society and state – the natural ego. He must then reach universal ground by repelling therefrom the determinate ego as such. But then the universal cannot rule except as the fanaticism of an abstraction.<sup>15</sup> Moreover, critical detachment precludes a science of the state. Philosophy cannot assert its ideal against the state and still claim scientific status for its ideal; it must rather submit to the objective political order and disclose, by means of a logic verifiable by all, the reason immanent within it.

Yet an obvious danger lurks here. In his passion for scientific knowledge of matters over which people have always disputed, Hegel is treading a thin line between the abdication of reason's ideal standard of justice to the historically given order, on the one hand, and the triumph of reason's standard as the known implicit structure of the given order, on the other. So, rather than accuse or explain away, let us seek the conditions under which he can avoid the abdication and achieve the triumph. The specific question for discussion is: under what condition is critical thinking's surrender to the temporally given state-type compatible with its disclosing an ideal standard capable of guiding the existing state to its own trans-temporal perfection? I'll call the condition we seek the compatibility condition.

### 1.2 *What is Rational is Real and What is Real is Rational*

That which, according to Hegel, links the “unsophisticated heart” and the genuine philosopher is their common trust in, and orientation by, the objectively given civil order.<sup>16</sup> For the ordinary person, this trust originates in an unreflective moral sentiment – one nurtured by upbringing and habit and solidified by religion. For the philosopher, it is the product of an insight that Hegel expresses in his famous aphorism: “What is rational is real and what is real is rational.”<sup>17</sup> What exactly does this mean? What is the basis for Hegel's confidence in the reasonableness of “what is”?

One way to understand Hegel's saying is to see it as summing up his synthesis of ancient and modern political philosophy. The philosophers of the late Enlightenment – Rousseau, Kant, and Fichte – thought that what is rational must become real, but they did not think that what is real is rational. For them, practical reason's inherent right to rule the world must become realized in civil unions of natural agents under laws of freedom, but they would not have said that individual agents are “real” only as members of such a union. On the contrary, they saw civil union as an *artificial* chain. Like Hobbes, Locke, and Hume before them, they thought that human individuals have a fixed reality apart from practical reason's rule; that is why they saw humanity's natural state as a state of perfect independence and anarchy. To use a spatial metaphor, practical reason moves downward to order natural agents, but natural agents do not move spontaneously upward to unity under practical reason. They have to be coerced – forced to be free – and even once in a civil union their natural



tendency always to seek their own advantage must be continually repressed by threats appealing to that very tendency. For moderns, then, practical reason's realization in political sovereignty is *not* the self-realization of human individuals in citizenship; it is the external restraint on a natural will for which reason is a yoke. Only in solitary virtue can the human being hope to join its nature with its reason. So in contrast to Hegel, moderns such as Rousseau, Kant, and Fichte would have said: what is rational is real, but what is real is not rational.

The ancients – Plato and Aristotle – would have said just the opposite. For them, matter moves upward to its real nature as intelligibly informed, but rational form does not move downward to master the material substrate. It is unconcerned with the substrate, the latter being precisely the unreal. Thus human animals are really *human* only as free citizens of a *polis*, but the form of a *polis* stands apart from its imperfect instantiations among human *animals* and bears no defect in not being perfectly replicated in existence. It is a pattern “laid up in heaven,” to be approximated on earth rather than realized. Alternatively, the best *polis* is itself a mixture of form and matter, and the purely rational form is a divine essence that attracts everything existent to its form but that is not itself moved to become existent. To the ancient Greek mind, realizing the rational signified compromising reason's purity and stringency with concessions to the unreal, hence lowering standards of excellence from the absolutely best *polis* to the best possible *polis* or from the best life to the best life for composite man.<sup>18</sup> So, in direct contradiction of the moderns, Plato and Aristotle would have said: what is real is rational, but what is rational is not real. This is the heart of the quarrel between ancient and modern political philosophy.

Hegel's aphorism announces the end of the quarrel. It connects the distinctively modern claim that the rational must become real with the distinctively ancient claim that existence becomes real only as rational. Concomitantly, it rejects the one-sidedness of both ancients and moderns. Against their beliefs in a unilateral movement either of rational form downward to existence or of existence upward to rational form, Hegel says that the movement is bilateral and reciprocal. Reason's downward movement to existential embodiment is met by existence's spontaneous upward movement to its reality as the clear embodiment of reason. Consequently, modernity's project to give existence to the reasonable can be achieved without compromising the lofty standards of ancient rationalism. Understood as saying these things, Hegel's political philosophy eludes classification as either modern or ancient. It is rather the unity of both in something unprecedented when first presented and unmatched since. But how exactly is the reciprocal movement to be understood?

### 1.3 The Notion of Right

Let us begin, as Hegel does, with the notion or form of Right.<sup>19</sup> In the phrase “what is rational is real,” the rational refers to this form. The form of Right is located, Hegel tells us, in the free Will.<sup>20</sup> So also say Rousseau, Kant, and Fichte, but what Hegel means by the free Will is not what they meant. They meant the

natural agent's capacity for causally undetermined choice, and they equated Right with the totality of laws under which the free choice of each natural agent could co-exist with the free choice of all. By contrast, Hegel locates the form of Right in a free Will independent of natural agents – in the objective free Will of an organized people. The movement in the *Philosophy of Right* from Abstract Right to Morality to Ethical Life is a critical one through which the free Will of a people proves itself as the form of Right through the collapse of natural agent-centred normative frameworks insofar as those frameworks take themselves to be Right simply rather than particular manifestations of a more fundamental idea. Untethered from natural agents, the free Will can be examined as an independent nature rather than as something abstracted from the natural agent's limitations – from its contingency and idiosyncrasy; hence it can be understood as it really is. Regarded in its independent nature, the free Will (hence also the form of Right) unfolds itself into three distinct elements, which are thus elements of a whole.

The first element is universality. The Will is free by virtue of its capacity to detach itself from the biosphere and so from every natural will's particularistic inclination to satisfy physical lacks and preserve itself in life. To begin with, this capacity originates a universal will<sup>21</sup> just in the negative sense that it contains the possibility for a purpose that is *not* particularistic. Still, though the universal will is not determined by the biosphere's law of self-preservation, it is not yet a free will. Inherently or potentially free, it is still *negatively* determined by the biosphere, for it remains conditioned as a void by the sphere of particularism from which it withdrew. Lacking a content of its own, the universal will remains tied to the standpoint of the natural will, for which all content of choice is given by life. As a universal will and nothing more, therefore, the free Will is self-contradictory; it is implicitly free but actually determined.

But not only is the *abstractly* universal will defective as a free will. It is also defective as a universal will. This is so because, detached from the biosphere, the universal will is not yet the universal aim of the natural wills from which it distinguished itself. It merely stands juxtaposed and external to those natural wills, which take their aims from life. But then there is nothing universal about this will; it itself is a particular will alongside the satisfaction-seeking wills of natural individuals. So, as a universal will set over against a plurality of particular wills, the will is not only self-contradictory as a free will; it is also self-contradictory as a universal will.

This self-contradiction reveals the logical necessity for the universal will to put itself in the place of life as the common end of individuals and to govern them with a view to its own primacy or end-status. For the universal will to do this, however, it must win recognition for its primacy among a plurality of particular wills; it must particularize itself in commands that specify its primacy; and it must act through the discretionary choices of particular agents who represent it – who speak and act in its name. In sum, the universal will is genuinely such only in becoming authoritative through the medium of the particular will.

It thus logically contains the particular will as its complement. So, the second element of the free Will is the particularity that is inseparable from the universal will's becoming truly the universal end of a plurality of individual agents.

The third element of the free Will is already implied in the first two. Because the universal will requires the individual agent's particular will for its genuine universality, the particular will in turn presupposes the universal will as the ground of its rational necessity. Accordingly, if we now inquire into the desideratum of freedom from the side of the individual agent's particular will, we obtain the following answer. The individual agent's freedom requires that it put aside life as its fundamental end and choose instead the realization of the universal will's authority through its (the particular will's) free service. This is so because, whereas life is an end externally given to the particular will and indifferent to its existence, the universal will is, as we now see, the substantial ground of the particular will's rational importance and worth. It is therefore an end immanent in the particular will – one it can serve for the sake of its own interest in dignity. So, just as the particular will was contained in the universal, so is the universal will contained in the particular. The third element of freedom is the dialectical whole formed by the mutual complementarity of the universal and the particular will.

This is the element Hegel calls individuality in the sense of oneness or totality. Here reposes freedom in its full meaning. As Hegel puts it, freedom's full meaning is "being at home with [oneself] in [the] other."<sup>22</sup> Each pole of the free Will sees its end-status reflected and confirmed in the free deference the other shows it for the other's own sake. The universal will values the particular will's spontaneity for the sake of its confirmed universality; the particular will values the universal will for the sake of its own rational worth. Their submission to each other is compatible with the end-status of both, for the submission is free and reciprocal. All is for one and one is for all. Full freedom is achieved not in flight from dependence but in the reconciliation of dependence and independence. The bond between universal and particular wills such that each sees in the other, not an indifferent or hostile object, but its own confirmation and support is the notion of the free Will.

We can now see why the free Will is the form of Right.<sup>23</sup> The mutual deference of free agencies is the universal form of all valid claims of right and authority, because in this form all such claims are validated through the free recognition of the claim's addressee. There is thus no unilateralism here – no relation of domination and subordination, hence no trace of brute power or violence. There is rather a relation of mutual subordination between free ends, wherein each respects the other's independence for the sake of its own confirmed end-status.

We see this general form instantiated in both private and public law. In private law, a valid claim of right enforceable against another is one that the other could recognize without loss to the independence that qualifies it to give a validating recognition. Kant's axiom of right, according to which Right is the sum

of the conditions under which the freedom of each can co-exist with that of all under a universal law, is a case of Hegel's form of Right; it evinces the structure of mutual recognition between free agents. In public law, a valid authority is one to which the subject could submit without loss to the independence that qualifies it to deliver a validating recognition. But such an authority is one that reciprocally submits its commands to the test of whether they conform to constitutional principles that can be self-imposed by a free agent. Thus, Rawls's device of a veil of ignorance behind which abstract free agents choose the basic principles of their political association is another case of Hegel's form of Right.

If in the phrase "what is rational is real" the rational refers to the form of Right, where in this form is the necessity for the form's becoming real?

#### 1.4 *The Ethical Idea*

The move from the form of Right to reality parallels the movement, discussed in Chapter 1, from the form of knowledge to the reality thereof, for they are the same form. To understand this transition, compare the form to its implicit content. In its notion or concept, the free Will is the dialectical unity (unity-in-difference) of the universal and the particular will such that each is the end it purports to be only through the medium of the other. As a notion, however, the free Will is a *universal* form of Right juxtaposed to the non-notional individual – to the immediately existing or natural will. The Notion as a whole is now self-contradictory just in the way that the universal will alone was. Implicitly or in concept, it is the universal will realized through the particular will; as yet, however, it is an unrealized universal (a notion) alongside particular wills, and so it is once again itself a particular will. To become actually the realized universal it is implicitly, the notion of the free Will must become realized in an ethical *life* wherein a multitude take the universal will of a people as its end for the sake of the rational worth each receives in being a particular medium for the universal's realization. The life of a people evincing the mutual recognition structure of the form of Right Hegel calls both the Idea of Right and the Idea of freedom. The universal will is finally free of nature's externality in seeing itself confirmed as the fundamental end of natural individuals; the particular will is finally free of nature in willing the universal as the substantial basis of its own worth. Thus the Idea of freedom is the Idea of ethical life or, more simply, the Ethical Idea. It is the notion or form of Right embodied in the life of a people.

In the move from the Kantian free will of natural individuals to the objective free Will of a people and from thence to the Ethical Idea, Hegel has taken us back, conceptually speaking, from modernity to Greek antiquity. Considered by itself, the Ethical Idea is the ideal form of Greek political life. The *polis* was the end of the human individual who served its authority for the sake of his own dignity, but the separate (non-political) ego was not the end of the *polis*. Let us now see how Hegel takes us from ancient Greece to the modern world.

As a life in direct conformity with the independent form of Right, the Ethical Idea adds nothing to the form but life. So the Ethical Idea is the objective

“order” of the free Will enlivened by the duty-conforming action of participants. It is a life in accordance with the duties inherent in institutional roles given by the self-division of the form of Right (the free Will) into its three elements: universality, particularity, and totality. Corresponding to universality is the public sphere in which are fulfilled the duties of citizenship; corresponding to particularity is the private sphere composed of families, wherein are fulfilled the duties of spouse, parent, and sibling; and corresponding to totality is the state of which public and private spheres are mutually presupposing parts, each requiring the other for the confirmation of its universality and rational worth, respectively (see pp. 149–50). Because, moreover, these institutions are grounded independently of human artifice in the objective self-division of the free Will, the duties inherent in each (i.e. the duties of citizenship and family role) are binding on the individual whether or not he or she understands why they are binding. For the individual, in other words, these duties comprise an objectively necessary content of natural law in respect of which there is no right of subjective insight or of moral independence.

Still, this does not mean that the laws of the ethical order confront the individual as an external and repressive power. Because the ethical order requires the individual’s free volition to confirm it as the end or good of the individual, its authority is spontaneously recognized by the individual as that which first necessitates his freedom and so endows that freedom with political rights – rights of participation in rule. In the ethical order, accordingly, political obligation and political rights presuppose each other. The individual’s political obligation presupposes the ethical order’s reciprocal recognition of his rights as a citizen; and his political rights presuppose his recognizing the authority of the state that establishes them for its own sake.

Have we now understood why, as the moderns think, the rational must become real and why, as the ancient Greeks thought, the real is identical with the rational? Not really. We have arrived at the *idea* of an ethical life, but why should we think that this idea must or can be replicated in existence? It demands, after all, that natural agents give up their separate and self-centered lives and take as their fundamental end a polity wherein they are recognized as ends only insofar as they are members of a collective. Even were this a normative ideal, why is it not one to be approximated in existence rather than replicated, given that natural agents will presumably do what comes naturally to them – put their self-interest first? Replicating the Ethical Idea seems to require either that natural agents be forced to be self-effacing citizens, or that the Idea be watered down to accommodate the way people actually are without acknowledging the dilution, or that the political philosopher interpret the existing state as conforming to the Ethical Idea while treating all evidence to the contrary as an illusion of non-philosophers. Needless to say, none of these alternatives is viable. The first would contradict the Ethical Idea, wherein there is no trace of violence; the second would abandon the Ethical Idea just in the way that moderns from Machiavelli onward did; and the third would justify

the accusations of ideological rationalization perennially leveled at Hegel. Nor do we yet understand why natural agents are said to come to their real existence only as rationally necessary means for the universal's realization. Who is to say that this is their reality rather than their separate, atomistic existences?

### 1.5 *Spirit as the Reconciliation of Ancients and Moderns*

Let us therefore examine the Ethical Idea to see if we can find the necessity for it to become existent. Here we follow the same method as that by which we understood the transition from the notion of Right to the Ethical Idea: we compare the Idea as it exists *qua* rational idea to its inward nature.

*In* Idea, the Ethical Idea is the ideal of a political life joining two separate agencies in mutual recognition: the universal self of a unified people and the particular self of the individual. Yet, *as* an Idea, the Ethical Idea is a structural order composed of complementary public and private spheres in which the particular agent is present only as an occupier of an institutional role – only as a family member and a citizen. The determinate individual is not yet recognized as a separate ego with an importance of its own. That is why Hegel calls the ethical order a “circle of necessity” to which individuals are related as “accidents to substance.”<sup>24</sup> “Whether the individual exists or not,” he says, “is all one to the objective ethical order.”<sup>25</sup> Liberal critics have pounced on such statements as evidence of their view that Hegel's state is an organism in whose life the individual is immersed and to whose self-sustaining purpose it is unilaterally subordinated.<sup>26</sup> They are not wrong in thinking that the Ethical Idea has no room for the individual ego. They *are* wrong, however, in thinking that the Ethical Idea is Hegel's last word about Right.

“The concept of this Idea,” he writes, “has being only as Spirit.”<sup>27</sup> Precisely because the Ethical Idea is one-sided vis-à-vis the separate individual, its ideational form contradicts its inner nature, which is to be a bi-personal nexus of mutual recognition between two separate and independent egos. Were the ethical order unilaterally to assert its sovereignty against the separate individual, it would commit the very violence its nature abhors and thereby subvert itself as the Idea of Right. It would have to denigrate and erase the independent subject whose free recognition *its own idea* says is essential to its confirmed authority; and so its presumed natural authority would (as the Greek *polis*'s did) morph into a conventional force repressive of nature. This, finally, is the self-contradiction within the sphere of the rational taken alone that explains why the rational must become real. So what follows is an attempt at an explanation. The challenge is to explain the transition from the Ethical Idea to existence in strictly logical terms, leaving no trace of mysticism or hocus-pocus.

Taken alone, the Ethical Idea is *not* the mutual recognition of separate egos that it *is* inherently or in idea; for it includes the individual agent only as a member – only as belonging to an objective order. Its existence *qua* Idea is thus inadequate to its own inward nature; or its inward content outstrips its formal shell. Its self-inadequacy alone entails that the Ethical Idea *lacks* its other for

completion, where completion means becoming actually the recognized final end it is in Idea. Put otherwise, the Ethical Idea's self-discordance *qua* Idea reveals the Idea's lack of what is *not* the Idea – the separate individual ego. Lack, however, implies connection. The Idea's lacking its other for self-completion means that the Idea's other is not (as the ancients thought) inertly other – not an opaque, pre-given fact available for purposive ordering; it is rather the other *of* the Ethical Idea – a differentiation *from* the Idea and therefore *within* a latent whole connecting the Idea and the separate ego. Call this latent whole Spirit.

So far we have reached the thought that the immediate (natural) ego's separateness from the ethical order is really its separation *from* the ethical order; for the ethical order immanently requires the individual ego it does not contain. But correlative to the individual ego's separation from the Ethical Idea is the Ethical Idea's separation from the individual ego. What does it mean for the Idea to separate itself from the individual ego? It means to let the individual go free of the Idea's logical priority – of its claim to being a final end such that the individual comes to its essential nature and objective importance only by sloughing off its immediate existence and fulfilling a role given by the Will's self-division. Releasing the individual from the Idea's logical priority effects a transition from the Idea to existence. This is because it involves the Idea's sacrificing its logical priority in favor of the logical priority of the immediately existing individual. The isolated individual ego is now the primary reality – first and fixed – and political order is now unilaterally a means to the individual ego's pre-political ends, an external and artificial restraint on its natural self-centeredness. The ethical order is thus turned upside down, and its unity is rent; it is now bifurcated into law on one side and nature on the other. It has become what moderns call "civil society."

Still, the Ethical Idea cannot have departed. Because the Idea has released the individual ego from its logical priority for the sake of becoming actually the recognized end it is implicitly, the split in civil society between law and nature is really the self-splitting of a latent whole into the opposition between universal and particular egos. The Idea, in other words, is still logically presupposed in the immediate (natural) ego's independence; for its (the Idea's) self-inadequacy alone is what necessitates that independence and gives it objective importance as embedded in Spirit. This means that, in letting the individual ego go free, the Idea ("what is rational") has penetrated existence to a depth of which the ancient Greek philosophers could not have been aware. More specifically, the Idea's structure of mutual recognition is now the deep structure of "what is." Because the opposition of the universal and the particular ego in civil society is the internal opposition of a latent whole, each pole presupposes the other, and so each (self-contradictory alone) will seek completion through the other in totalities – phases of civil society – that reflect the Ethical Idea's unity-in-otherness structure with varying degrees of clarity. This, finally, is the meaning of the first part of Hegel's aphorism in the preface to the *Philosophy of Right*.

“What is rational is real” means: because of its self-discordance alone, the Ethical Idea has *let* the individual go free of its logical priority; in doing so it has passed over into existence and dwells within it as the latter’s own immanent end and structure.

The second part of the aphorism follows from the first. Because the Ethical Idea has penetrated existence to a depth of which the ancients were unaware, the ancients’ claim that what is real is rational can now gain its ultimate vindication. “What is real is rational” means: that existence is alone true to its inherent nature or inner potential which mirrors the Ethical Idea’s structure of bi-personal complementarity and mutual recognition. Because the Idea has become the immanent structure of existence, existing individual egos become actual, fulfilled, or what they really are only within relationships of complementarity between separate and mutually deferring egos reflecting the dialectical unity of the Idea. Hence only such relationships are stable and lasting. So, for example, slavery is evanescent because, failing to instantiate the mutual recognition structure of the Idea, it gives no satisfaction either to master or slave. By contrast, institutions such as property, contract, and monogamous marriage are stable because they are manifestations of the Idea in the self-oriented activity of individual egos seemingly removed from the Idea.

Now, without the thought that the Ethical Idea has entered into existence, Plato’s and Aristotle’s identification of the real with the rational is one-sided and therefore dogmatic. The philosopher asserts that the real is the rational in the face of the residual singular – the Ethical Idea’s unreduced remainder. That assertion can be met with the opposite and equally irrefutable assertion that the individual’s real or natural existence is its isolated existence outside the ethical order and that natural justice is the right of the stronger.<sup>28</sup> If, however, the Ethical Idea has penetrated existence, then the real *must* be the rational; for the Idea’s indwelling in “what is” entails that “what is” becomes what it inherently or really is only as manifesting the Idea. There is no longer a remainder to protest the identification of the real with the rational. So, with the thought that “what is rational is real,” Hegel potentially (depending on whether the thought is true) fulfills modern voluntarism in a way that also fulfills ancient rationalism. The rational can become realized in existence without compromising the ethical standard of the ancients.

### 1.6 *The Compatibility Condition*

The basis for Hegel’s sharing the confidence of the “unsophisticated heart” in the inherent rationality of “what is” is now apparent. Let me summarize. The fact that the Ethical Idea is self-contradictory in its one-sidedness means that the separate individual, rather than being external and indifferent to the Idea, is organically differentiated from it and hence within the larger totality of Spirit. This in turn means that modern civil society, with its prioritizing of the natural ego and resultant bifurcation of public (state) and private (society) spheres, is only apparently oblivious to the rational unity of the Ethical Idea. Because



bifurcation is really the self-splitting of one Spirit, it is not a constant of political life; it is rather potentially cancelled in a primordial sense and so cancels itself actually in totalities progressively more adequate to the Ethical Idea. The philosopher, therefore, need not measure or judge civil society against an ideal of justice somewhere outside it; he need only observe, in the interdependence of extremes held in frozen isolation and in the advancing reconciliation of these extremes, the manifestations of the Ethical Idea in the existing world.

Can, however, the belief that the Ethical Idea is immanent in the relationships (for example, the market, social estates, the rule of law) making up civil society justify the surrender of critical thinking to the established order? That belief depends, as we now see, on an upside down view of things (derided by Marx) according to which the Ethical Idea begets the human ego, whereas it is obviously more natural to think that the human ego begets ideas. Shall philosophy give up its customary critical detachment for a positive science of civil society on the basis of so strange an inversion of common sense? Further, even supposing the inverted perspective correct and the existing split between public and private spheres potentially reconciled in a primordial sense, what if it is not potentially reconciled in fact? In that case, the surrender of critical reason to "what is" in the faith that the Idea manifests itself therein amounts to a quietist acceptance of *whatever* is, indeed (as Nietzsche charged) to an idolatry of history that elevates what is into what is right.

Of no avail here is the rejoinder that by "what is real is rational" Hegel does not mean "what exists is rational." That is certainly true. The saying, "what is real is rational" means: that existence is alone adequate to its essence and so imperishable which is rational existence or which reflects the structure of the Idea. But if the existing order is not rational, then it merely exists without being real. Hence to surrender critical reason to it is to make transient existence, mere becoming, the standard of Right and not the Idea. And yet to raise the Idea to a critical standard held *against* the existing order would be just as bad. For that would reduce the Idea to a utopian ideal in the minds of a few – one whose realization would require just the sort of unilateral force anathema to the Idea.

The solution to this dilemma gives us the "compatibility condition" we were seeking. We asked how critical reason's surrender to the temporally given state could be made compatible with its disclosing an ideal standard capable of raising the state to its trans-temporal perfection. We can now answer as follows. The claim that the Ethical Idea has entered into existence and is the deep structure of modern civil society must obtain validation in the face of the ordinary person's feet-on-the-ground perspective and civil society's all-too-evident fragmentation. This can occur only if the primordial complementarity in Spirit of civil society's poles has become an implicit complementarity in historical fact, each pole now *self-consciously* presupposing and requiring the other. But this is also the condition for the compatibility between critical reason's surrender to historical becoming and its preservation as a critical reason. The primordial reconcilability in Spirit of public and private poles must have become their

reconcilability in the here and now such that critical reason's surrender to the Idea's self-realization is *the one thing still needed* to call forth the mutual recognition that raises civil society to the State whose constitution conforms to the Idea.

This chapter thus continues the inquiry of the previous one. We must determine from the *Philosophy of Right* the institutional conditions that constitute the *de facto* potential unity of political life; and we must show that these conditions are such as to require Hegel's philosophy and that alone to actualize this potential. If it is confirmed, moreover, that Hegel's philosophy is a bridge from the civil society in human time to the Idea-replicating State that completes divine-human history, then Hegel must be acquitted of the charge, not only of quietist accommodation to the status quo, but also of absolutizing the model of the modern state. For if Hegel's philosophy is a bridge from human time to the transcendental history of the Idea's realization through humanity, then no temporal state can be final for Hegel, and so Kojève, Strauss, Bloom, Fukuyama, Pinkard, Houlgate, etc., etc. are mistaken. They are mistaken not because, as others suggest, *no* state can be eternal for Hegel, there being an unbridgeable gulf between the mind/nature dualism of political life and the absolute Spirit realized in art, religion, and philosophy. They are mistaken because the existence of a bridge renders history from the human standpoint potentially transcended in the State that completes history viewed from the divine standpoint. This State is itself absolute Spirit, as the first epigraph to this chapter clearly states.

## 2 The External State

### 2.1 *The Two Principles of Civil Society*

"The [just] constitution is," says Hegel, "but just as essentially it becomes ..." <sup>29</sup> Civil society is a phase in the becoming of the just constitution – that phase in which the Ethical Idea is "split into its extremes and lost," that it might be proved in human freedom as the structure of valid claims to authoritative rule and individual worth.<sup>30</sup> By "civil society" (*bürgerliche Gesellschaft*) Hegel means the form of social and political life peculiar to "the modern world."<sup>31</sup> More specifically, he means the political order adapted to the individual ego that has freed itself from the teleology of the medieval community and from feudal constraints on liberty, acquisition, and commerce. Hegel identifies two fundamental principles of civil society – an overt, self-conscious one and a latent, hidden one.

The principle overtly organizing civil society is the claimed end-status or dignity of the isolated individual ego with its mixture of natural needs and fancies. The individual agent claims to be morally self-sufficient, owing its end-status not to God or political community but solely to its own person, self-consciousness, or free will. This claim is reflected in the idea that individual persons are bearers of natural rights to act in whatever way they judge

advantageous in a pre-political condition and that such a condition – a condition of anarchy – is their natural condition. Since their dignity does not depend on society or state, they are by nature asocial and apolitical. The economic and political associations into which they are, despite these claims, drawn are no longer conceived as fulfillments of their social and political natures; for the pre-modern belief in such a nature is rejected. Rather, these associations are now understood as unilateral means to the security of the “natural man” in his person and acquisitions.<sup>32</sup> This mind-set, says Hegel, is the point of view of the *bourgeois*, who is the human type on which civil society is based.

Because, however, this human type sees itself as naturally solitary, it is driven solely by self-interest. Whether its interest is in self-preservation, power, or prestige, the human individual presupposed by civil society is motivated exclusively by his own advantage; he considers himself naturally indifferent to the welfare of others, however defined. As a consequence, the other human beings on whom each depends for the satisfaction of his needs and wants are free to be indifferent to his satisfaction; they have no enforceable duty of concern for another’s welfare, which is thus abandoned to chance. Here, therefore dependence on others in society means dependence on the arbitrary free will of others, hence a negation of the independence initially claimed as a natural right. Since, moreover, the *bourgeois* is naturally selfish, the public authority whose aim is the common welfare and on which each depends for security is an external force repressive of his selfish nature – a state *opposed* to a society of mutually indifferent egos. Precisely this mutual externality and indifference of the (for Hegel) primordially related extremes of the individual and the collective is the distinctive feature of civil society, that which distinguishes it both from the simple unity of the Greek *polis* and the more comprehensive unity of the just State to come.

The latent principle of civil society – the one seen only by the Hegelian philosopher – is community. Because the modern ego’s claim to moral sufficiency is, for Hegel, necessitated by the Ethical Idea’s logical need for confirmation as the individual ego’s end out of the mouth of an adversary – because it is the *result* of the Ethical Idea’s letting the individual go free of its logical priority – that claim is mistaken. Unbeknownst to the modern ego, its very independence of the Ethical Idea, its separate end-status as an atomistic ego, is itself embedded in a Whole – Spirit. And so when, to satisfy its needs, gain recognition for its property, and perfect its rights, the natural ego moves into society and authorizes a sovereign, Hegel will see the operation of the second principle of civil society – namely, the inherent communal nature of the ego pulling it into society and state by an unconscious necessity – a cunning of Reason. Although the Ethical Idea is lost in civil society’s bifurcation into state and society, it continues to manifest itself obscurely in the mutual dependence and attraction of putatively self-sufficient egos.

But this is not all that the Hegelian philosopher will see. If civil society presupposes an asocial person, it also bends this person into a social one, requiring

it to obtain satisfaction through relationships of mutual benefit. For Hobbes, Locke, and Kant, civil society is a static order, its model institutions determined for all time by an unchangeably selfish human nature. For Hegel, by contrast, civil society, while adapted to the self-validating drive of the natural ego, also educates and civilizes it, thereby changing human nature from the brute egoist known to Hobbes, to the enlightened one assumed by Locke, to the individual capable of Rousseauian feats of self-transcendence for the general will. Moreover, in changing the nature of the human individual, civil society itself changes. It undergoes an institutional development whereby, owing to the ethical cultivation of the individual, the antagonism between public and private spheres gradually softens. As self-interest impels individuals to seek fulfillment of their needs and wants through association, institutions arise which, behind their back, form an intricate structure of mediation reconciling to each other public authority and private self-seeking. So, for example, ethical associations in the private sector mediate between the isolated individual and the state, reconciling particular interests to the universal, while procedural rights in the public sector mediate between the arbitrary state and the individual, reconciling public authority with individual autonomy and civic altruism with self-interest. In this way, the institutions of the just constitution develop in the womb of civil society to the stage where the one thing still needed is a philosophical midwife. The question for discussion, then, is this: what must the institutional character of civil society have become in order that the just State may be realized merely by the mutual recognition of public and private actors through the medium of the knowledge that discloses the reasonableness of what is?

## **2.2 *The System of Needs***

Civil society develops, according to Hegel, through forms of human association representing progressively tighter integrations of individuals into unities. The motive force for this development is self-interest, but because the progress from one form of association to another involves a greater reclamation of natural atomism for rational order, self-interest serves the Ethical Idea's realization. We can understand the development as a progress from an association instrumental to the satisfaction of the atomistic ego to a political community that is the individual ego's final end or good.

The first form of association is a market, which Hegel now calls a "system of needs."<sup>33</sup> Mutually indifferent egos are first brought together out of a self-interested drive to satisfy needs generated by their self-consciousness. The moral self-sufficiency of the individual ego is first revealed as illusory by the fact that its needs as a free being are such that it cannot satisfy them alone. Partly this is because its material needs go beyond what is required for animal survival to that which is necessary for refinement, wherein is shown the ego's transcendence of natural necessity. Partly it is because, in addition to material things, the ego requires the recognition of other egos for its valid mastery of (property in) the things it acquires unilaterally. It is by the division of labor alone that both

types of need are satisfied. Refinement requires this division because it consists in a differentiation and multiplication of needs and of the means of satisfying them far beyond what an individual can satisfy by his own labor. Recognition demands it because, as we saw, only by virtue of the exchange of commodities can one ego recognize another's property without foreclosing its opportunities for boundless acquisition (see Chapter 2, Section 3.1).

From the standpoint of the self-realization of the Whole – of the State that mirrors the Ethical Idea – the justifying rationale for the division of labor and exchange lies elsewhere. What is salient from this perspective is the civilizing effect these institutions have on the natural ego. Hegel's teaching concerning the market economy differs markedly from that of Rousseau and Marx. Both saw the market as an obstacle to the individual's self-identification with the general or species will and so based the just community either on its simplification or abolition. In stark contrast, Hegel argues that the market economy, far from being an obstacle to the just State, is one of its institutional preconditions and building blocks. As one might expect, this disagreement reflects a more basic one over the nature of the just community. For Rousseau and Marx, political justice requires dissolving the autonomy of the private sector in the sovereign rule of a collective will in which, ideally, all participate. For Hegel, it involves fusing public and private sectors within a totality that preserves the autonomy of both and that harmonizes active citizenship with busyness in private affairs. Viewed with that goal in mind, the market economy appears in a positive light quite apart from its efficiency and productivity advantages over command economies. It becomes a force, not for atomization, but for independence-preserving *socialization*; and so it precisely mediates between the selfish loner and the public order, helping to reconcile self-seeking with action for the common good.

Hegel explains the market's civilizing role as follows. First, by making possible the satisfaction of mental wants as opposed to strictly biological needs, the market liberates the individual ego from natural necessity and turns him into a purposive agent who acts for a self-posed conception of his good. Here again the contrast with Rousseau and Marx is striking. Hegel has no nostalgia for the noble savage. While he will echo Rousseau's critique of *amour propre* and its expression in luxury-seeking, he will do so only insofar as it gives rise to unregulated inequality and dependence. He will not throw out what is valuable in the market along with the excesses of an unregulated market. What is valuable is the market's humanization of need and consequent cultivation of self-determining subjects. Also valuable is the market's inculcation of the habit of work and of satisfying others thereby, hence its disciplining individuals to govern themselves by interpersonal standards of quality and performance. So, whereas Marx sees the market economy as transiently necessary for creating the material abundance communism needs for its necessity-free work, Hegel views it as a moralizing institution that already facilitates necessity-free work. No doubt, the social morality the market teaches is a prudential and

instrumental one that is destined to be surpassed. And of course taken alone, it facilitates necessity-free work only for a few. Nevertheless, the market is the most basic institutional precondition for the eventual dialectical fusion of public and private sectors. By requiring the individual ego to mediate its satisfaction through socially valuable work, the market socializes without destroying the ego's freedom to pursue subjective ends; by making possible the natural ego's rise from action for survival to action for a self-formed good, the market fosters the kind of self-determining subject the Ethical Idea requires for its validation as the Good.

The *bourgeois*, of course, is unaware of all this. To him, the division of labor and exchange make sense only in terms of self-interest. They are conditions of plenty, variety, efficiency, and luxury. Because, moreover, egocentrism (Rousseau's *amour propre*) drives market activity, the liberation it affords is self-contradictory. Through its insatiable hunger for luxury, the isolated ego frees itself from natural necessity only to become dependent on the opinions and caprice of other egos. Hegel names three causes for the insatiability of the *bourgeois*' desire for opulence, for the productive energy of civil society consequent on that hunger, and for the poverty consequent on the inevitable ownership of the abundant product by some and not others.

First, the project of refinement is inherently self-contradictory. The ego's drive to master unfree things involves it in a dependence on material possessions for the liberation from need. Hence every satisfaction breeds a new desire, every refinement a demand for more refinement. Second is the factor of emulation. Because freedom from nature is in the first instance a withdrawal into self, its objective reality requires recognition by other selves. Yet the social definition of what constitutes freedom from nature is relative to time and place. Today's luxury item is tomorrow's necessity, and the Afghan émigré who proudly displays his Polaroid camera in America is soon disabused. For the *bourgeois*, therefore, self-liberation from crude necessity means satisfying opinion and keeping pace with changing standards. The third cause of insatiability is the inherent competitiveness of the claim to end-status of mutually isolated egos. The ego's liberation from, and mastery of, nature is its honor as a person, the enjoyment of which is self-esteem. But honor is relative; it consists in distinction from others, here from those who toil for subsistence. Because, however, the standard of refinement is constantly rising, honor and self-esteem are attainable only through a race for superiority in standard of living – a race without a finish line. All these factors combine to drive civil society onward in an endless chain of expanding needs and of amassing the wherewithal to meet them, the result of which is increasing interdependence among mutually indifferent egos and a widening gulf between rich and poor. Hegel's verdict on modern civil society is blunt. It presents, he says, "a spectacle of extravagance and want as well as of the physical and ethical degeneration common to them both."<sup>34</sup>

The picture of man in society Hegel gives us is obviously similar to the one painted by Hobbes and Rousseau. But whereas Hobbes thought he was

describing human nature – “a general inclination of all mankind [toward] a perpetual and restless desire for power after power” – Hegel understands the human type of early modernity as an historical result. It is the consequence, specifically, of (a) the downfall of a Greek political community that had no room for the separate ego it cultivated, which ego could thus claim dignity only as an isolated ego, and (b) the downfall of a medieval theocracy that sought to discipline, repress, and fetter the separate ego, but that, in acquiring power, took on the ego it hated as a corrupting force. Of course, Hegel was not the first to relativize Hobbes’s portrait of humanity to a particular historical epoch; Rousseau famously preceded him in this. But whereas Rousseau saw only the surface negative side of civil society and, on its account, sought to bury civil society under a revived city state, Hegel sees also the latent positive side. He discerns the Ethical Idea’s glimmering in the spontaneous growth of institutions that are organs of the just State gestating within civil society. These institutions will be taken up into the just State once it is born, while civil society’s negative features will have been sloughed off, for only the rational is real. So let us return to the positive side.

As needs continue to divide and expand, the division of labor progresses. Skills become more specialized, and tasks become sufficiently mechanical to be performed by machines. Men grow dependent on each other not only for the commodities their narrow skills cannot produce but also for the means to employ their skills. From one point of view, this increased dependence heightens insecurity and degrades the laborer to an appendage of a machine. From the standpoint of the Ethical Idea, however, interdependence fuses private self-seeking and the public interest in a relation of mutual deference that dimly manifests the Idea. Once labor itself becomes a commodity, the interdependence of egos is so pervasive that no one can further his own ends without producing something or performing a service of social value. Thus society can defer to the selfishness of the *bourgeois* in the confidence that the *bourgeois* will reciprocally promote the social good for selfish reasons. With Hegel, accordingly, the “invisible hand” that Adam Smith discerned in the free market (and that Kant called man’s “unsocial sociability”) becomes part of a larger cunning of Reason whereby particularism is progressively socialized and so prepared for marriage with public authority. It is one layer of a complex architecture of institutions that will mediate between the external state and the isolated ego, thus permitting the dialectical fusion of public and private sectors in one State.

The market’s fusion of private and public interests engenders a spontaneous kind of distributive justice that Hegel describes thus:

When people are thus dependent on one another and reciprocally related to one another in their work and the satisfaction of their needs, subjective self-seeking turns into a contribution to the satisfaction of the needs of everyone else. That is to say, by a dialectical advance, subjective self-seeking turns into the mediation of the particular through the universal, with the result that each person in earning, producing, and enjoying on his

own account is *eo ipso* producing and earning for the enjoyment of everyone else. This necessity, which is rooted in the complex interdependence of each on all, now presents itself to each individual as the universal permanent resources...which give each the opportunity, by the exercise of his education and skill, to draw a share from it and so be assured of his livelihood, while what he thus earns by means of his work maintains and increases the general resources.<sup>35</sup>

The last sentence in this passage is a version of the formula "from each according to his  $x$ , to each according to his  $y$ ," where  $x$  is ability and  $y$  contribution to the social wealth. At first blush, the sentence suggests Hegel's agreement with Adam Smith and the school of economic liberalism he inspired on the equation of market outcomes with fair outcomes. For Smith and Friedrich Hayek, the distribution of wealth resulting from a perfectly competitive market cannot be impugned on justice grounds (though it might make a claim on our beneficence) because each is rewarded according to the social value of his product or service as measured by the price others are willing to pay for it. On its own, a market composed of many actors none of whom can significantly influence prices yields a distribution that conforms to the rule of proportional equality identified by Aristotle as the form of distributive justice. On this view, the only reason in justice for meddling with market forces is to ensure the existing market's approximation to the ideally competitive one so that reward indeed reflects the social value of one's labor rather than the manipulation of prices by economically powerful conglomerates. Given a perfectly competitive market, there is no injustice in market outcomes to rectify.

However, for both Aristotle and Hegel, proportional equality, while a formal requirement of distributive justice, is not a sufficient condition thereof, for there is also a substantive requirement. A distributive outcome is substantively just either in a relative or absolute sense. It is substantively just in a relative sense if the end contribution to which determines one's reward is the end of a particular kind of civil association and if the distributive outcome is in fact determined by contribution to that end. The outcome is then just relative to that kind of association. It is substantively just in an absolute sense if the end that determines reward is the comprehensive and final end of political association and the distributive outcome is in fact determined by that end. Now, "from each according to his ability, to each according to his contribution to the social wealth" is, for Hegel, distributive justice relative to a civil association whose end is the satisfaction of mental wants or preferences. It is not distributive justice in an absolute sense because the satisfaction of preferences is not the final end of political association, though it is a proximate end. So, in the passage quoted above, Hegel is not saying that market justice is the whole of distributive justice.

Nevertheless, it is part of distributive justice. A free market of atomistic individuals achieves the conditions for distributive justice because it substitutes a relation of reciprocity for the mutual isolation and indifference of individuals in



a so-called state of nature. In a pure state of nature consisting of many Robinson Crusoes, each producing only for himself, one cannot speak of a distribution as just or unjust, since there is no association whose benefits and burdens can be distributed fairly or unfairly. However, in a market of specialized producers, one can begin to distinguish between just and unjust distributive outcomes because there is now a universal interdependence to which every participant in the division of labor contributes equally but whose benefits can be unequally shared. One such benefit is abundance, in which all can be said to share equally if even the poorest has more and better than he would have alone. Another is self-determination – the freedom to work toward self-authored goals rather than for mere survival. And a third is the leisure to produce or partake of the “finer things in life” – works of art and philosophy – things that are good for a free sensibility but (unlike market goods) independently of sensibility unmodified.

If the free market produces the conditions of distributive justice and even the relative distributive justice pertaining to satisfactions, it does not produce distributive justice simply. This is so because the persistence of atomism renders the dependence of each on all a relation between mutually indifferent egos in which the state of nature is still present. The market partly civilizes but also partly incorporates the natural ego, with the result that, once laborers become dependent for their livelihood on owners of machines, the benefits of interdependence can be skewed in favor of those who can enjoy exclusively the good of self-determination that (as we’ll see) is the end of a more advanced and complex civil association. Once, however, institutions are in place ensuring the universal enjoyment of self-determination, market justice (an instantiation, recall, of the Ethical Idea) is the special distributive justice suited to the allocation of subjective satisfactions. Hence civil society’s laws (for example, anti-trust laws) aiming at perfect competition belong to the evolving just State.

### **2.3 Social Estates**

The atomism of the system of needs is partially overcome in the social estates. Since Hegel’s characterization of these bodies follows with minor variations his earlier account in the *Realphilosophie* II, we can forgo another detailed description and focus instead on the estates as instantiations of the Ethical Idea mediating the harsh opposition between the atomistic ego and the alien universal.

As Hegel presents them, the social estates are groupings of individuals sharing a disposition for one of the three general functions in the social division of labor. Like the system of needs as a whole, the estates are rationally justified as socializing and mediating bodies, but here too the Ethical Idea realizes itself through individual free will. So neither birth nor (as with Plato) authority decides which estate an individual will enter, but rather disposition, talent, and free choice. The functional divisions themselves, however, are not artifacts of choice, nor are they the historically contingent strata of feudal and capitalist

society. As Plato's classes correspond to natural divisions of the soul writ large, so do Hegel's estates correspond to natural phases of the Ethical Idea's realization. Thus, the agricultural estate embodies the phase of primitive community, where the individual ego makes no claim to separate end-status. The business estate (*Stand des Gewerbes*), comprising artisans, merchants, and manufacturers, embodies the phase of the individual's differentiation from the primitive community, his assertion of independence as an isolated ego and the consequent opposition between universal and particular.<sup>36</sup> To the phase of reunification, where the particular will become a conduit for the universal, corresponds the universal estate – an intelligentsia from which civil servants will be drawn. The important contrast with Plato (besides allocation to estates by free choice) is that there is no hierarchical order to these divisions. As equally necessary phases of the Ethical Idea's realization, the estates have equal rank and dignity.

In addition to their being part of the system of needs, each estate is also a subsystem in which one can again discern the Ethical Idea's reciprocal deference of distinct agencies. Consider first the business estate. In commercial transactions, each party defers to the other's independent self-interest for the sake of satisfying its own. As with Smith's butcher and baker, each obtains the other's service by appealing not to the other's beneficence but to his selfishness. Yet among the members of this estate, mutual deference takes the form of mutual exploitation. Neither party to a transaction aims at the good of the other. Rather, the parties are mutually indifferent egos who view each other's want merely as an opportunity for personal gain.

It is otherwise with the agricultural and universal estates. Here the parties to the relationship are an individual and a collective, and their mutual deference takes an ethical form akin to friendship. The individual aims at the collective good from which it receives its livelihood and dignity; the collective provides for the individual from whom it obtains realization. So, for example, in the agricultural estate, the individual stands in a relationship to nature and his family. The farmer does not indifferently exploit nature for his personal ends; rather he harvests its fruits with care for its conservation. In turn, his long-run welfare is assured through family love and homestead, which need not be alienated in order to bring satisfaction and whose value as a provider is thus independent of market fluctuations. Also ethical in this way is the relation between the civil servant and society. The civil servant purposely acts for society as a whole, through which the satisfaction of his agency needs is mediated; in turn civil society guarantees his livelihood so that he can devote himself exclusively to public duties.

The fly in the ointment, it seems, is the business estate, which at this stage is still a *bourgeoisie* – what Hegel earlier called a *Bürgerstand*. This estate alone fails to exhibit the concerned reciprocity between separate egos that characterizes the Ethical Idea. Here the atomistic ego's freedom is still the end to which both nature and society are unilaterally subordinated. Having renounced the security of family and soil, the *bourgeois* is "thrown back on its

work, reflection, and understanding ...”<sup>37</sup> Yet, given its isolation, its inevitable dependence on others for the material supports of freedom is a dependence on external and indifferent others. Though everyone pursues his self-interest by deferring to the other’s, still, no one *aims* at the other’s interest; and so it is left to chance whether an individual earns enough to sustain an independent life. Besides, Hegel duly observes, the share each individual receives of the social capital hinges on all sorts of chance factors, such as the capital one inherits, family culture, natural endowment, and so forth.<sup>38</sup>

However, the disparities in social shares to which luck gives rise are not by themselves unjust. This is so because the necessity inwardly compelling the Ethical Idea to defer to individual liberty for its realization yields room in distributive justice for inequality of resources resulting from the free play of individual differences. Accordingly, Hegel is no luck egalitarian. Neither equality of resources nor equality of satisfaction is a norm of social justice departures from which require an egalitarian justification or correction. Erecting such a norm, Hegel says, is a “folly of the empty understanding” that separates the moral equality of persons from their particularity as individuals, incoherently identifies *impartial* Right with what accords with that *one-sided* abstraction, while tendentiously denying rights to particularity.<sup>39</sup> Nevertheless, inequality becomes unjust if it reaches an extreme where the worse off are unable to participate in the benefits of self-determination and high culture secured by the network of universal interdependence to which they contribute. In that case, the poor are unilaterally subordinated to the beneficiaries of that system.

At that extreme, the business estate divides itself into two economic classes: the self-determining rich and the dependent, survival-driven poor. In contrast to the division of society into estates, this class division falls outside the objective phases of the Ethical Idea’s realization through human agency. Indeed, as evincing a relationship of domination and subordination, it runs contrary to the Ethical Idea. But this incongruity between social existence and the Ethical Idea raises two interrelated problems for Hegel. First, if critical reason’s surrender to the objective process of the Idea’s realization is to be the triumph and not the abdication of critical reason, it cannot surrender to an existing order in which, contrary to the Idea’s norm of reciprocal subordination, a class of people is excluded from the good of self-determination that social interdependence makes possible and to which it contributes. Second, we know that Hegel’s just State will encompass public and private sectors in a dialectical unity of complementary opposites. But how can a business estate internally riven into hierarchical classes be taken up into the State without corrupting it into a class state or breaking state unity into class conflict? That is the ball we must keep our eye on.

#### 2.4 The Administration of Justice

We have now to understand the logical transition from a society of self-interested market actors to a civil society wherein a public authority impartially

determines and enforces the property rights recognized in market exchanges. This transition occurs in paragraphs 208 and 209 of the *Philosophy of Right*. Hegel's explanation is terse, and what follows is an attempt to flesh it out.

Paragraph 208 begins: "The principle of this system of needs, which is that of the personal particularity of knowledge and volition, contains universality in and for itself, the universality of freedom, only abstractly and therefore as the right of property." The thought here seems to be this. In a market where otherwise dissociated egos present themselves as loci of wants and preferences, the particular will is identified with the will to satisfy these subjective ends. There is no knowledge of a particular will as a moment of the objective free Will – as a will through which universal freedom is specified and given effect. Therefore, a public ground capable of supporting universal right, duty, wrong, and rectifying force is reachable only by abstracting away from particularity *as such* into the determinacy-free universality of free will. This abstraction is what is called the person. The final end-status involved in free will is objectively realized in the person's right to the exclusive possession and use of the unfree things it has reduced to its possession. Thus, in a market society of atomistic producers and consumers, Right is coterminous with the legal person's right to control its body and acquisitions, and wrong is coterminous with the transgression of personal and proprietary boundaries. Succinctly, Right is Abstract Right. The logical progression by which the person's project to realize its end-status in objectively valid property is the progression of Abstract Right.

We followed this progress in Chapter 2. There, the person strove to realize its end-status vis-à-vis unfree things through the stages of unilateral possession, lordship and bondage, the division of labor, the exchange of commodities, and the executory contract. The protagonist of this narrative was the individual ego that regards itself as self-sufficiently a final end, hence as naturally asocial and apolitical. Yet the process of its self-realization as an end belied its claim of self-sufficiency, for in this process the ego showed itself to be dependent on other egos both for its emancipation from natural necessity and for the social reality of its claim of ownership of the things it acquired. The freedom from work for life's bare necessities required a division of labor through which each provided the material support for the self-determination of all and all served the self-determination needs of each. The social reality of ownership in others' self-respecting recognition thereof required a system for exchanging commodities; for only in open market exchange is (a) the right to exclusive possession reconciled with others' freedom of acquisition and (b) social recognition of ownership conditioned on the buyer's paying the social cost of everyone else's frustration. The person's mastery of things was then perfected in the executory contract – an exchange of promises – wherein the mutual recognition of persons as owners is fully disentangled from the determinate individual's appetite for material things. In all these market and legal institutions, the Ethical Idea's structure of mutual recognition is validated as the matrix of valid worth claims out of the mouth of an ego who claims final worth in isolation.

In market society, however, property is still “implicit” or inchoate. This is so because the system of exchange remains subservient to the isolated ego for the sake of whose end-status it came into being. It is a conventional arrangement existing for the sake of the naturally solitary ego. As a consequence, the solitary ego’s self-realization as an owner is incomplete. This is so in two respects. First, since the solitary ego is here prior to its embodiments in contractually recognized property, it claims a liberty to respect property and honor its contractual promises when and as it suits. Thus, no property rights exist yet, and so the ego’s end-status remains unfulfilled. Second, even supposing that the individual ego acknowledges the property rights recognized in the market, each is so far judge in his own cause in disputes over what is his or another’s, and each is the enforcer of his own right-claim, unilaterally determining what a just remedy is. The result, once again, is that property is unreal. Accordingly, the property already tacitly recognized in the market becomes fully realized only when market actors surrender their claim to unlimited liberty and to unilateral right-determination to a sovereign authorized to elaborate Abstract Right in determinate laws, to apply laws to particular cases, and to back its judgments with a monopoly of rightful force. Only with such an impartial administration of justice does a condition of rights come into being.

For social contract theorists such as Hobbes, Locke, and Kant, the rationally necessary transition from market society to a public administration of justice ends the story concerning rightful public authority. Not so for Hegel. In his account, the same move produces an authority whose impartiality is false and whose coercive force is external repression, hence violence. This occurs because of the assumed naturalness of the ego’s solitary condition. If we begin from dissociated egos, then particularity is equated with idiosyncrasy. Universality is then possible only as a reflex from particularity as such to the abstract identity, hence equality of persons. This equality is the fundamental “right in itself” against which acts are judged rightful or wrongful.<sup>40</sup> The state now enforces abstract equality against individual egos presumed to be naturally partial to themselves and indifferent to the self-interested perspective of others. That is to say, it enforces an *unnatural* impartiality against naturally selfish egos. But of course an unnatural impartiality is not impartiality. It is one-sided vis-à-vis natural self-preference.

This is why Hegel calls the state belonging to civil society an “external state.”<sup>41</sup> This state stands for the formal equality of persons juxtaposed to a private sphere given over to the rational pursuit of particular self-interest. Civil society is thus bifurcated into *opposing* spheres: a particularism-free state on one side and a particularism-only market on the other. The state must rule its subjects externally because the abstractly impartial standpoint taken by the laws is not naturally immanent in self-interested willing. It must rule repressively (not merely coercively, for even the just State must resort to coercion against those who would deviate from their natural end) because its force is directed not toward the individual ego’s natural end but against it. But a state

that rules a private sphere externally is a partial force relative to what it rules; and a state that rules repressively rules violently.

From Hobbes to Kant, Rawls, and Nozick, the state belonging to civil society – the state juxtaposed to society – is identified with the idea of the state, as if the *polis* never existed. Even Marx succumbed to this ahistorical prejudice of classical liberalism. It was because he identified the state with the external (superstructure) state that he thought the socialization of the system of needs would render the state as such superfluous.<sup>42</sup> Equating the coercion of the state with the violence of the external state, he thought that coercion itself was relative to the external state; and so his followers had no use for the constitutional constraints on state coercion developed within civil society to ensure its acceptability to reasonable subjects. These, they thought, would wither away as coercion itself did – as separate egos became cooperative producers and the coercion of people became the administration of things. As a consequence, there would be no law to constrain the bureaucratic managers of the socialist economy as they too went about repressing the separate ego.

Hegel calls the state belonging to civil society an external state to distinguish it, not from a public management of production and distribution, but from the dialogical State – the State alone adequate to the idea of an *impartial* authority because encompassing public and private sectors as equal parts of a differentiated Whole. As we'll now see, moreover, the constitutional constraints on public coercion evolved within civil society are developing features of the dialogical State – those that will *attract* the civic spirit of separate egos that Marxists tried to force.

The state's externality and repressiveness constitute the negative side of civil society's administration of justice – the side visible from the standpoint of the atomistic ego's project to realize itself as an end. There is also, however, a positive side visible from the standpoint of the Ethical Idea's self-realization *through* the atomistic ego. This side consists in the gradual mitigation of the state's externality (and of the ego's correlative heteronomy) as the individual ego learns that public coercive authority is immanent in his reasonable will and, reciprocally, as the state submits its coercive rule to the test of self-imposability by a reasonable agent.

The school in which the ego learns citizenship is not, however, a state school. It is the market. The universal interdependence engendered by an advanced division of labor forges a link between the pursuit of self-interest and the advancement of the collective interest such that each is realized in deferring to the other. Grasped conceptually, however, that nexus between universality and particularity is the general will immanent in every individual's reasonable will. In Kantian language, the general will is the possibility condition for Adam Smith's *a priori* synthetic judgment regarding the lawful fusion of general and individual interests in a perfect market. So the *bourgeois* learns by reflecting on the market that the public interest is not, as in medieval and early modern thought, external to his self-interest *qua* separate individual ego; it is rather his separate ego's own

reasonable will – the will that wills only what *all* separate egos could will – and that only as such is the public interest genuinely public. But what all separate egos can will is the totality of laws under which the external freedom of each is rendered compatible with the external freedom of all – that is, the determinations of Abstract Right.

The general will's sovereignty establishes the agent's right vis-à-vis administrators of Abstract Right (legislators, judges, juries) to autonomy as a constructive legislator, judge, and juror. The subject of authority must be capable of accepting whatever law and judgment is to bind it. This is so because, where the general will is sovereign, the criterion of a valid positive law or application of law is whether it is a possible expression of the general will and so whether the law or application could be endorsed by free and equal egos. Now because the market has educated the atomistic ego to citizenship – to awareness that its realized end-status requires the practical authority of the general will – the public authority can, without losing its authority, in turn submit its commands to a constitutional test of whether they could be rationally assented to by those whom they command. The sovereign, in other words, need no longer impose its will *ab extra* on a passive and apolitical subject, as Hobbes's sovereign does; it can obtain proof of the justice of its commands by enlisting the insight and assent of the subject's mind. The result is a bill of rights to the institutions and procedures enabling the subject's rational endorsement of laws and their application.

Hegel sums these rights up as a "right of insight" or a "right of self-consciousness."<sup>43</sup> We call them rights of due process. They are rights to the satisfaction of the individual's insight as to the justice administered by the state. Minimally, a right of insight is a right that the principle of rightness – the equality of persons – be concretized in positive laws, for to understand the meaning of an abstract principle is to understand its determinations. Second, the right of insight is a right to the publicity of positive law; for one cannot testify to the reasonableness of a law one cannot know. Making the laws public means not only publishing them but also ensuring that they are comprehensible as specifications of a few basic principles of right. Thus codification is best, but the important thing is that the laws form an intelligible system. Further, laws must treat all human beings as equal persons having the same civil and political rights; for no final end could rationally assent to a law that imposed restrictions on its liberty for the benefit of others not equally restricted for his benefit.<sup>44</sup> Lastly, state enforcement of the laws must be *demonstrably* just such that the reasonable agent in the defendant's shoes could accept the judgment as fair; hence the accused's right to a public trial by an impartial tribunal, to counsel, to full answer and defense, to appeal, and so forth.<sup>45</sup> By such institutions the individual can be satisfied as to the rightness of decisions on questions of law. But his right of insight demands also that the verdict on the question of fact be rendered by those whom he trusts because of their similar life circumstances, whence the right to a trial by jury.<sup>46</sup> In all these constitutional rights, the right of

autonomy that was anarchically asserted by the apolitical “conscience” outside the state is institutionalized as one element of the well-ordered State sufficient for all desiderata of human independence.

From the individualistic standpoint of civil society, constitutionally recognized rights to legality, non-discrimination, and procedural fairness are checks on government officials. Their point is to hold rulers to the end of rights-protection for the sake of which political authority was recognized. People are to be subject not to the arbitrary will of natural persons, but only to standing laws of equal freedom they can impose on themselves and to the judgments under these laws they can accept as reasonable. That is the obvious and usual explanation for the rights to legality, non-discrimination, and due process, and Hegel would not discard it. He offers, however, another explanation from the standpoint of the Ethical Idea’s realization in civil society. Looked at from that vantage-point, these rights (a) instantiate the Ethical Idea’s structure of mutual recognition and, in doing so, (b) partially mediate the opposition between the external (abstractly universal) state and the selfish ego, thereby advancing the reconciliation of these extremes. Let us take these points in turn.

In enabling and enlisting insight and constructive assent, the state submits its laws and judgments to its citizen’s mind (though not yet to its private subject’s mind) for confirmation of their rightness. Because it does so, the individual ego can spontaneously value the state as a universal that reciprocally values and makes room for his insight and assent. That is a manifestation of the Ethical Idea. Moreover, just as the social estates mediated between the atomistic ego and the state, helping to reconcile particularism to the universal, so do legal rights of publicity, non-discrimination, and due process mediate between the external state and the ego, helping to reconcile state authority to individual self-determination. So understood, these rights are necessary but not yet sufficient conditions for philosophy’s being the only thing needed to complete the reconciliation. What else is needed?

### ***2.5 The Welfare State***

Within the framework of Abstract Right, there are only negative rights against interference with a person’s body and property. There are no positive rights to welfare or coercive duties of concern. This is so because Abstract Right presupposes atomistic free wills whose needs are equated with biological necessities. For free wills, biological necessities are but importunate wants, and, absent a contract, no free will can be coerced to satisfy or accommodate another’s wants, however urgent. In a stateless market, Abstract Right’s negative rights are tacitly recognized, but they remain unreal for reasons already discussed. The inchoateness of negative rights in market society explained the necessity for the transition to an administration of justice by a public authority representing the general will incipient in the market’s fusion of interests. It would thus seem that the public authority is duty-bound to enforce negative rights and nothing more.



In paragraph 229, Hegel explains why this is not so. Logical transitions from the implicit to the explicit never leave unchanged the normative situation they make explicit. They always bring to sight some new normative necessity not taken account of in the preceding configuration. The transition from the market's tacit recognition of negative rights to the public administration of justice is a case in point. The inchoateness of rights in a stateless market required a move to the normative and practical authority of the general will. The general will's practical authority in turn established the individual ego's political right to autonomy; for that the general will is sovereign entails that a positive law is valid if and only if each agent can be conceived as legislating it for itself. So, the move to an administration of justice for the sake of negative rights brings to sight a positive right of autonomy vis-à-vis the public authority – a right correlative to the authority's duty to be a general will. We saw that rights to publicity and a fair trial already concretize that general right as it applies to the judicial process.

Abstract Right, however, knew nothing of a right to autonomy. It knew of a right to act from self-chosen ends (against being coerced to act for another's ends), but it did not care where the ends came from. They could come directly from life, from papal authority, from social opinion, or wherever. A right to autonomy, however, is a right to laws that all free agents can independently choose as ends determining their conduct because they are either desiderata of freedom or applications of these to circumstances.

The idea of a desideratum of freedom is also foreign to Abstract Right – at least to its stated foundation, though it equivocates on this point. There, freedom had no desiderata, because it meant only the agent's innate capacity to detach itself from objects of instinctual appetite and thus to choose (or not) such objects freely. Overtly, the only desiderata in Abstract Right are life's desiderata. Tacitly, however, Abstract Right admitted that ownership is a desideratum of realized freedom, and this became self-conscious through the absolutization of formal freedom in crime, its retributive nemesis in revenge, and the perfection of retribution in judicial punishment. So the transition to an administration of justice also brings to clear sight the idea of a desideratum of freedom – of freedom's needs.

Now, one of freedom's needs is an administration of justice that actualizes ownership and rights to equal liberty by impartially adjudicating boundary disputes, correcting private wrongs, and punishing criminal wrongdoers, all in accordance with procedures enabling insightful assent. But that is not the only one. An administration of justice protects freedom only by reacting *ad hoc* to particular wrongful transactions. It does not protect freedom proactively by *preventing* bodily harm and damage to property independently of wrongful transactions. Yet this too is a need of freedom, for if self-mastery and ownership of things are such needs, then so must be the maintenance of the objects mastered or owned. To protect freedom proactively is to promote the public welfare – another idea foreign to Abstract Right, for which welfare denotes

nothing but the satisfaction of subjective ends. So the move to an administration of justice for the fulfillment of welfare-blind negative rights brings to sight a new political right to welfare understood as the maintenance of things (the body, owned resources) necessary for freedom. Promoting the public welfare is the task of the state's police power.<sup>47</sup>

Hegel's understanding of civil society's police power is far in advance of his time. It is not the understanding of classical liberalism – the liberalism that knows only negative rights. Classical liberalism's view of the police power finds a representative expression in Kant's doctrine of Right.<sup>48</sup> For Kant, the state's police power is its power to preserve the things needed to sustain a condition of rights over time. One of these things is a population. The public authority has a duty to preserve its people, a power pursuant to that duty to promote public health and safety, and a right to tax for that purpose. Another thing needed for a rightful condition is a general disposition among subjects to obey the law. To preserve that disposition, the state may legislate against public nuisances such as vagrancy and prostitution that, by inuring people to vulgarity, lower their moral standards. Other supports for a civil condition are the facilities ("conveniences") needed for exercising freedom – public roads, means of transportation and communication. In sum, the police power in classical liberal thought is the power to maintain infrastructural supports to a civil condition of negative rights.

The power to tax for relief of the poor fits into this general picture of the police power. Kant explains this power so. Since, in entering a civil condition, everyone gave up his natural liberty to take whatever he needs to survive in order that property might be possible for everyone, the wealthy have a duty of charity to ensure that no one perishes because of the property institution to which they owe their wealth. The state shoulders this moral duty but transforms it into a coercive one "for reasons of state" – that is (as I read this) in order to sustain the civil condition; for without relief, the starving would have no duty to adhere to a civil condition benefiting only the propertied and making them worse off than they were without a state (where they could take what they needed).

Observe what this justification for wealth transfers justifies. What we have are unilateral transfers from haves to have-nots whose aim is to prevent the poor from facing a prospect that would absolve them from a political obligation all others still have. The poor have no right to these transfers. Rather, the state assumes a charitable duty falling initially on the wealthy and changes it into a coercive one for reasons of its own preservation. Accordingly, Kant's justification for wealth transfers extends to the "poor laws" typical of the Industrial Revolution and nothing more. It is worlds apart from today's welfare state, which justifies redistribution as a duty of the state *qua* state to secure the *self-determination of all* through cooperative schemes by which citizens *mutually* guarantee the basic life needs of each.

Hegel's justification for the police power aligns with the justification for the welfare state. Its function is not to maintain infrastructural supports for a civil

condition that realizes only the negative rights of abstract persons. Rather, its task is to realize “the right actually present in the particular” – in *individuated* persons – to live in accordance with self-determined ends.<sup>49</sup> The right in the particular is the correlate of the state’s duty to be a general will in which every agent can see itself because it serves the freedom needs of all. The police power discharges this duty in three ways: by removing hindrances to the pursuit of subjective ends, by preventing personal injury and property damage that might result from activity not in itself wrongful, and by ensuring that “every individual’s livelihood and welfare [is] treated and actualized as a right.”<sup>50</sup> The state removes hindrances by providing roads, bridges, street lighting and so forth, by facilitating transactions (e.g. by a land registry system), and by making free trade treaties favorable to domestic business; it proactively prevents harm through public health measures (e.g. sanitation) and laws that, for example, protect consumers from unsafe products, not leaving safety to unreliable market forces; and it ensures everyone’s basic livelihood by providing free public education, by keeping the cost of necessities low, and by relieving a poverty to which anyone whose resources are hostage to blind market forces might be reduced.

In alleviating poverty, Hegel says, civil society discharges a duty of distributive justice, not one of charity and not one arising from state necessity.<sup>51</sup> For the sake of freedom from work for bare necessities, civil society has carried everyone beyond the economic independence that was possible in the subsistence agrarian economy. With its division of labor and specialization of skills, it has made everyone dependent on everyone else. It therefore owes everyone the self-determination benefit of the system of universal interdependence to which everyone contributes and is now exposed. The point, accordingly, is not to prevent the poor from dying; it is to provide everyone with the assurance of basic needs so that all are free to work and live for self-determined ends. In this respect, says Hegel, civil society is a “universal family” that takes the place of the autarchic family economy it superseded. The individual is now “a son of civil society” who has duties toward the whole only insofar as he also has entitlements against it, and entitlements only insofar as he has duties.<sup>52</sup> With this justification for wealth transfers, Hegel’s thought is a rooster’s crow rather than an owl’s hoot. It anticipates a welfare state that did not dawn in Germany until Bismarck’s social insurance legislation of the late nineteenth century and whose struggle to emerge in the Anglo-American world is the story of the early twentieth.

From the standpoint of the individual ego, the welfare state’s point is to protect its freedom from blind market forces by guaranteeing the satisfaction of freedom’s basic needs. There is, however, another point – one hidden from the individual ego. From the standpoint of the Ethical Idea’s realization, the welfare state’s significance is that it further mediates the opposition between the exclusively universal will and the exclusively particular will, helping to reconcile political duty with particular self-interest so that civic virtue can accord with inclination rather than having to fight it. This is what, notwithstanding

its institutionalizing rights of non-discrimination and due process, the administration of justice cannot do alone. Its deficiency in this respect stems from two sources.

First, in having as its sole end the realization of rights in the body and property, the administration of justice realizes a general will that engages only the individual's pure will as a person identical with all others; it does not yet give the determinate individual a reason in his or her particular self-interest for civic virtue. The welfare state does, for it guarantees to each citizen the basic preconditions for living in accordance with the *subjective* goals he or she autonomously projects.

Second, in having as its end the perfection of market rights to acquired things, the administration of justice realizes a general will whose content is derived from the individual ego's drive to validate its end-status by means of unlimited acquisition through market exchanges. The move to political authority did not moderate this drive. This means that the general will's unity is exposed to the near certainty that, because of unequal natural advantages, free acquisition will create a cleft between those who own the means of labor and those who, lacking these means, must depend on their owners' free will for subsistence. If this occurs, the supposedly general will becomes the particular interest of those who exclusively derive the self-determination benefits of social cooperation from the survival-driven toil of others. Such a state cannot attract the civic virtue of all.

However, in assuring what everyone needs for self-determination, the welfare state advances an interest that is genuinely public. In doing so, it mediates the harsh opposition between a general will exclusive of concern for particular interests, on the one hand, and a particular will oblivious to the general, on the other. Because the general will now has a duty (on which its generality depends) of concern for the determinate ego's freedom needs, the determinate ego can reciprocally devote itself to the state as to that which must have its private interest in a self-authored life for its own interest. So, as a further condition for overcoming civil society's opposition of public and private interests, the welfare state is another constituent of the evolving just State.

## 2.6 *The Limits of the Welfare State*

Still, an administration of justice endorsable by the pure will and a welfare state endorsable by the self-interested will are not enough to root state authority in the self-interested inclination of the separate ego. Given the overt principle of civil society (the individual ego's moral self-sufficiency), the businessman is still assumed to be naturally self-interested and indifferent to others. Though he now has an institutionally grounded reason for devotion to the collective civic body, he remains inconsiderate toward other egos taken severally. Therefore, regulation for the public welfare must come solely from above. A duty of social responsibility must be externally imposed on actors presumed to be unmindful of others' welfare. And since no principle determines where to draw the

line between unacceptably and acceptably risky activity, striking the balance between public regulation and automatic regulation by market forces exposes the public authority to “odium” for expressing a particularism of its own.<sup>53</sup> Laws are commands not of a public authority but of the party that would subordinate public safety to irresponsible liberty or of the party that would smother free enterprise under intrusive government. Where differences over these matters are extreme, the public sphere can disappear altogether.

Nor is this the only cause of the state’s fragmentation. The credibility of the public authority’s claim to represent everyone depends, as we saw, on its assuring everyone the necessities of life so that no one need depend for subsistence on the arbitrary will of a private owner of the means of labor. Yet, argues Hegel, the public authority cannot but do this counterproductively (achieve the opposite of what it intends) without a fundamental reorganization of the private sector. In a paragraph that enunciates what Marx would later call the general law of capitalist accumulation, Hegel explains how, under a system of exclusive control of the means of labor by their owners, poverty and dependence are the necessary counterparts to the expansion of wealth.<sup>54</sup> The argument is terse and somewhat cryptic, but I believe it is this.

The amassing of wealth occurs through the spread of markets and the specialization and mechanization of tasks leading to the development of techniques of mass production and distribution – so through industrialization, factory organization, economies of scale, and so forth. The result is the creation of a class of persons who are tied to mindless, mechanical work, dependent for their livelihood on factory owners, kept at a subsistence wage so that their working lives serve the life-goals of others, and unable because of their poverty to enjoy the high culture that civil society makes possible. Moreover, by continually mechanizing production and replacing men with machines, wealth creation also creates an unemployed rabble of paupers – Marx’s industrial reserve army – whose downward pressure on wages further permits the concentration of society’s wealth in owners of capital. It is not poverty by itself, however, that makes a rabble. The very poor are also resentful, disaffected, and disposed to crime because they cannot put their poverty down to bad luck alone. They know that their situation is engendered by the antagonistic character of capitalist production, in which maximizing profits means minimizing wages, hence monopolizing the surplus over life’s needs required to finance self-determined projects and to the production of which everyone in the division of labor contributes. Because the poverty and dependence of some are generated by the wealth accumulation of others, economic inequality reflects domination and subordination rather than the natural lottery alone. “Against nature,” writes Hegel, “a human being can claim no right, but once society is established, poverty immediately takes the form of a wrong done to one class by another.”<sup>55</sup>

To right this wrong (and shore up its universality), the public authority adopts a number of expedients, none of which, Hegel argues, can be effective. If

it gives direct payments to the unemployed – enough to live on – it contradicts the aim of welfare policy, which is to promote self-determination, self-reliance, and self-esteem. The poor are encouraged to be idle, lazy, and dependent on the state. If, on the other hand, government tries to create employment opportunities for them, it only exacerbates the conditions that created an unemployed rabble in the first place. Increased employment means increased production. But, argues Hegel, “the evil consists precisely in an excess of production and *in the lack of a proportionate number of consumers who are themselves also producers* ...”<sup>56</sup> Because, in other words, the increased output is obtained by keeping the mass of worker-consumers at a subsistence level of wages, it inevitably involves overproduction, there being not enough consumer wealth to buy it. The result is an endless cycle of increased production, recession, and unemployment.<sup>57</sup> To obtain an assured market for their excess production and an outlet for their unemployed, states seek colonies abroad. But colonialism cannot solve the problem of unjust poverty either. It merely provides a safety-valve whereby owner-managers of capital can keep appropriating society’s surplus at the expense of the dependent class.<sup>58</sup>

Accordingly, the welfare state fails to cope with, and is ultimately ensnared by, the contradiction thus far inherent in the system of needs. The contradiction, as Hegel describes it, is this. The overabundance concentrated in the few and the poverty of the many are correlative sides of a zero-sum relation as long as the mass of worker-consumers are excluded from managing the means of production, making decisions regarding conditions of work, and sharing the surplus over life needs earned by the enterprise they work for. The root problem diagnosed by Hegel is the antagonistic nature of capitalist production where some own, manage, and derive profits from the means of production while those dependent on them for work are themselves only means of production whose costs must be minimized to the level needed to sustain life in order to maximize the owner’s freedom-enabling surplus. This creates the paradox that “despite an *excess of wealth* civil society is *not rich enough* ... to check excessive poverty and the creation of a penurious rabble.”<sup>59</sup>

## 2.7 Industrial Democracy

There is no legend more firmly entrenched in the mythology about Hegel than that according to which he understood with amazing foresight and acuity the contradictions of capitalist society, yet in the end offered no solution save external state regulation, welfare payments to the poor, and a resigned acceptance of the inevitable.<sup>60</sup> The first part of this characterization is undoubtedly true. The second part can be maintained only by ignoring, first, Hegel’s doctrine of the corporation, and second, his understanding of the practical role of philosophy.

In paragraph 229, Hegel remarks that, whereas the police power brings about the unity of the universal and the particular will “relatively” – that is externally or one-sidedly – the Corporation “actualizes the unity within a limited but concrete totality.” Further on, he elaborates:

While the public authority must also undertake the higher directive function of providing for the interests which lead beyond the borders of its society . . . , its primary purpose is to actualize and maintain the universal contained within the particularity of civil society, and its control takes the form of an *external system and organization* for the protection and security of particular ends and interests *en masse*, inasmuch as these interests subsist only in the universal. In accordance with the Idea, particularity itself makes this universal, which is immanent in its interests, the end and object of its own willing and activity. In this way the ethical principle returns to civil society as a factor immanent within it; this constitutes the specific character of the Corporation.<sup>61</sup>

Hitherto the public welfare (understood as the satisfaction of the conditions for the self-determination of all) has been the exclusive concern of a public authority set over against the selfish particularism of individuals in the private sector. However, with the emergence of the corporation, a limited common welfare becomes the aim of actors in the private sector itself. Recall that for both the agricultural and the universal estate, the reciprocal dependence of universal and particular interests was such that, in intentionally serving the interests of the whole, the individual gained the satisfaction of his/her own needs as something assured. In both cases, the reciprocity of service involved elements fused into a single unity, as in the Ethical Idea. By contrast, within the business estate, this mutual service of the individual and the collective involved extremes neither of which aimed at the interest of the other; and the result was that the process of mutual benefiting worked itself out as an unconscious necessity leaving to chance the satisfaction of the individual's freedom-needs. Where the business estate is a *Bürgerstand*, the Ethical Idea's instantiation is deformed.

The corporation cures this deformity. As Hegel presents it, the corporation is to the businessman what the family is to the farmer and what society is to the civil servant. As a close association of individuals engaged in a common profession or branch of production, the corporation exists, not to accumulate wealth as an end in itself, but to secure the freedom-needs and self-esteem of its individual members, who in turn consciously work for the benefit of the collective. Thus corporate life evinces the structure, "all for one and one for all," making corporate life an example of the Ethical Idea. This means that, within the corporation, Abstract Right's permission of welfare-blind accumulation is "sublated." That is to say, it is cancelled insofar as it means the right of the atomistic ego to amass wealth without regard for the welfare of others; it is preserved insofar as it means the right of the corporation member to share, proportionate to contribution, in the corporate wealth; and it is actualized inasmuch as it is thereby lifted out of the sphere of chance and made secure. In Hegel's words,

The so-called *natural right* of exercising one's skill and thereby earning what there is to be earned is restricted within the corporation only insofar as it is therein made rational. That is to say, it becomes freed from personal opinion and contingency, saved from endangering either oneself or others, and at the same time elevated to conscious activity for a common end.<sup>62</sup>

The cancellation of the atomistic ego's right to welfare-blind accumulation involves a change in the relationship of all individuals to the means of life, labor, and social recognition. No longer subordinating wage-earners to the self-determined ends of surplus-monopolizing employers, privately owned capital is now democratically managed for their common benefit by members of the corporation, access to which is conditional solely on proven vocational fitness.<sup>63</sup> Thus, with free public education and legal guarantees of civil equality in the background, access to the goods essential to a self-determined life is in principle open to all. Within the corporation, accordingly, both the individual's livelihood and self-esteem are secure: his livelihood by virtue of an assured access to the means of labor; his self-esteem by virtue of the socially recognized connection between corporate membership and personal merit and between corporate membership and contribution to society. This security achieved, Hegel says, the *bourgeois*' obsessive accumulation of wealth (and with it wide disparities between rich and poor) can end:

In the corporation, the family has its stable basis not only in the sense that its livelihood is assured there, conditionally upon capability, ... but also in the sense that this connection between capability and livelihood is *recognized*, so that the corporation member needs no further *external signs* to prove his skill and his regular income and subsistence, i.e. that he is a somebody. It is also recognized that he belongs to a whole which is itself an organ of the general society, and that he is actively concerned in promoting the comparatively disinterested end of this whole. Thus he commands the respect due to one in his social estate.<sup>64</sup>

Within the corporation, furthermore, economic inequality loses its unjust character and so ceases to incite resentment because wealth is no longer amassed by one class at the expense of another. Instead, all share proportionately in the corporate surplus, and individuals receive income with an awareness of their responsibility to those of their associates in need of assistance. Receiving aid need no longer erode self-respect, for obligations are reciprocal, and a recipient at one time can expect to be a donor at another.<sup>65</sup> So, while temporary poverty from misfortune is not abolished, the rabble is. And the welfare of individuals is now secured within the private sector itself, no longer exclusively from above by the state. Naturally, the state must supervise the corporation's handling of this function, provide a safety-net, and regulate corporate activity in the larger public interest; but there is now a partial devolution of public functions to the corporation, about which more in a moment.

Observe, too, that once a competitive market ensures rewards for producing relative goods according to the social valuation of one's product or service and once a minimum income is guaranteed for necessities, any further desideratum of distributive justice concerns not wealth redistribution but the production process. Given a competitive market and a welfare state, economic inequality is unjust not *per se* or when not redounding to everyone's benefit, but only when generated from authoritarian productive relations wherein



profits for masters are maximized by keeping servants at subsistence wages. Once these relations become cooperative and profitable for all, economic inequality merely reflects differences in natural endowment and work/leisure preferences, and respect for determinate individuality entails respect for those differences and the inequalities they generate. Of Rawls's difference principle (according to which economic inequality resulting from natural gifts is justified only if advantageous to the least well off) Hegel would say that it fails to respect individual difference.

Notice, finally, that where all members share in corporate profits and participate in management decisions, the state's guarantee of basic necessities is not the disincentive to work and the bane to autonomy that it was when the alternative was depersonalizing work for a master for the same basic necessities. In this way, the corporation complements the welfare state (which complements the administration of justice) just as the welfare state backs up the corporation. Together they ensure that no one is excluded from the self-determination and high-culture benefits of social interdependence. This is an example of how all instantiations of the Ethical Idea making up the just State presuppose and support each other, producing (as Hegel says in the preface) "the strength of the whole out of the harmony of the parts."<sup>66</sup>

From the standpoint of civil society, the corporation's purpose is to fulfill the human potential for self-determination revealed in the transition from the stateless market to the regulatory state. Yet the corporation has also a hidden purpose. From the standpoint of the Whole's self-realization, its significance is that it mediates between the solitary individual and the state and between the external state and particular interests. Because they too actualize the right of welfare, corporations in the private sector commend particular interests to the state, which can therefore respect their independence while also recognizing them as quasi-public bodies performing an ethical function. So corporations have a right to manage their own affairs and to recruit qualified members, but they also share public functions (such as social assistance and vocational education) formerly centralized in the public authority.<sup>67</sup> Indeed, as we'll see presently, they even have a political voice in the legislature.

Now, because the private corporation carries out welfare functions without being assimilated to the public sector, the corporation member performs the state's work while performing the corporation's – that is to say, in his workaday life. He thus unites in himself for the first time the functions of citizen and private individual – functions that Rousseau and the French revolutionaries considered antithetical.<sup>68</sup> Conversely, the state sees in the corporation the means by which to involve the private person in its work without loss to its universality, hence for reconciling the modern demand for self-government with a well-ordered and differentiated civil society.<sup>69</sup> So what Rousseau saw as possible only in a simple polity based on an agrarian economy, Hegel considers possible in a modern industrialized economy by virtue of the corporation. Not only, therefore, does the corporation commend particular interests to the

universal. Because it allows for the individual's continuous participation in public affairs, and because it secures for private interests public recognition and support, the corporation also commends the state to the private individual, who comes to see in it the substantial basis of his own welfare and dignity.

In this way, the split between the narrowly self-interested *bourgeois* and the purely public-minded citizen is partially overcome. By making possible the state's recognition and inclusion of independent private interests, the corporation also makes possible the rooting of civic virtue in self-love. The individual can now be a citizen not by strenuously putting aside his particular interests but more naturally for the sake of them. He can love his state as engaging not just his hypothetical pure will and insight but also his particular interests as a determinate individual. Accordingly, the corporation is the institutional pre-condition for an embryonic political virtue growing up within the private sector such that the state's enforcement of the public interest need no longer be external and repressive. Hegel writes:

the corporation mind, engendered when the particular spheres gain their entitlements, is now inwardly converted into the mind of the state, since it finds in the state the means of maintaining its particular ends. This is the secret of the patriotism of the citizens in the sense that they know the state as their substance, because it is the state that maintains their particular spheres of interest together with the title, authority and welfare of these. In the corporation mind the *rooting of the particular in the universal* is directly entailed, and for this reason it is in that mind that the depth and strength which the state possesses in *sentiment* is seated.<sup>70</sup>

The corporation described by Hegel in these few paragraphs did not exist in his own time, nor does it (to my knowledge) in ours.<sup>71</sup> When, as in his occasional writings, Hegel can put aside his strictures against prescribing what ought to be, he invariably urges that the medieval corporations abolished in the transition to modernity be revived on the ground of state sovereignty minus their fetters on economic liberty.<sup>72</sup> It would be a mistake, therefore, to view Hegel's corporation simply as a guild or to think that he is urging the restoration of guilds as a means of forestalling capitalist accumulation, controlling production, and restraining competition. The individualistic energies that broke loose from the restrictive guilds are permitted full expression within the corporation but are directed toward the collective profit in which everyone shares.<sup>73</sup>

But if Hegel's corporation is not a medieval guild, neither is it a benevolent society outside the workplace of the kind de Tocqueville saw as mitigating the individual's helpless dependence on government bureaucracy in the mass age.<sup>74</sup> Nor is it a modern employers' association or trade union lined up on one side of the relationship between capital and labor.<sup>75</sup> Unlike the first, Hegel's corporation unites everyday self-interested work with intentional social service, thereby making private enterprise itself a clear example of the Ethical Idea. Unlike the second, the corporation unites those engaged in a common productive enterprise within an association where cooperation replaces the

old antagonism between owning masters and non-owning servants. Lest this conception seem close to the one put into practice in fascist Italy, we should point out the fundamental dissimilarity between them. Fascist corporations were state instruments for the control of economic activity; Hegel's are private bodies whose connection to the state preserves the corporation's autonomous self-management. Fascist corporations were instituted from above by force; Hegel's originate as spontaneous associations within society, where the liberty of private associations is acknowledged by the state as a right. Fascist corporations were means by which the state exercised control over individual lives; Hegel sees them precisely as a buffer against such control.<sup>76</sup>

Despite the loss of despotic power that corporations would entail for owners of capital, Hegel nowhere suggests that expropriations will be needed to institute them. He does not say how cooperative management is to be reconciled with private property in capital; certainly, the twentieth-century solution of a collective agreement between managers and laborers within a widely and passively owned corporation was not even remotely within his vision. Rather, he simply implies that the impetus for the necessary reform is already operative in modern society in the shape of a morality of autonomy that has turned from social withdrawal to social activism and that affirms every person's right in virtue of his or her humanity to the material conditions of a self-determined life. The fulfillment of this morality is the corporation regulated from outside by the public authority and backed by the welfare state.

### 2.8 *How Interpreting the World Can Change It*

With the emergence of the corporation, the atomistic individualism of modern civil society is overcome. The opposition between public and private interests now takes the form of an opposition between two clear instantiations of the Ethical Idea: a due process, welfare state that seeks validation in the insight and self-interest of the subject, on the one hand, and a private sector organized into bodies intentionally fusing individual and collective interests, on the other. In this form, however, the opposition is potentially reconciled, not simply in a primordial sense, but in a *de facto* sense as well. That this is so is shown by the fact that both extremes are, in their mutual externality, internally contradictory. Dedicated to actualizing the right of welfare, corporations see this right contradicted by their vulnerability to the collective egoism of other corporations as well as to the still external power of the state. Claiming to stand for the whole, the public authority is, in its opposition to the private sector, still a particular interest. Hence each side requires the other for its own completion.

Furthermore, this *de facto* potential complementarity of public and private sectors is such that Hegel's philosophy is the one thing still needed to actualize it. Philosophy is needed because, given civil society's assumption that selfishness is natural, public and private interests must remain in conflict notwithstanding their mutual dependency and attraction. These interests are ultimately

reconciled only in the Whole which, independent of either extreme considered humanly, contains both as mutually essential elements. But this Whole is Spirit. Accordingly, a final mediation is needed, and this is the mediation of Spirit knowing itself as the law of reality through the self-realizing activity of the atomistic ego. Thus Hegel says: "The end of the [corporation] and the externality and relative identity of the [public authority] find their truth in the end which is universal in and for itself and its absolute actuality."<sup>77</sup> Spirit is at this point the *only* thing needed, because the primordial complementarity of universal and particular interests now exists historically as well. All that remains is for each extreme to recognize the other in and through the Whole – the unity of separates – that preserves and realizes both. Private associations can renounce their natural liberty to a State that gives them back their independence as a recognized right, and they can will the universal good as that which recognizes and secures their own. For its part, the public authority can renounce its monopoly of public affairs and make room in its constitutional structure for public-spirited private bodies, thereby validating its claim to impartiality. Through this mutual recognition there comes into being a political constitution in which the implicit harmony of public and private interests has become explicit, or in which Spirit is fulfilled as absolute Spirit. Our sole remaining task in this chapter is to determine the constitutional arrangements given which the fulfillment of Spirit is a matter for philosophy alone.

### 3 The Political Constitution

#### 3.1 *Hegel's Unclassical Liberalism*

The *de facto* complementarity of public and private sectors brings into view the just State – the State in which the Ethical Idea is perfectly reflected. To this entity alone does Hegel apply the unqualified term, "State." Civil society was an "external state," a repressive public order juxtaposed to a market of atomistic and mutually indifferent egos whose property it was instituted to protect. As such, it was inadequate to the notion or inherent nature of the State, which, as the idea of an impartial authority, is inherently a Whole encompassing the distinction between public and private sectors. The true State – the State *par excellence* – is not a means to the realization of pre-political rights. Like the ancient *polis*, it is an "absolute unmoved end in itself," the destiny of the individual, the Whole wherein is first realized his potential freedom and dignity.<sup>78</sup> Yet the State also differs from the *polis* in that it is actually what the *polis* was only in theory – namely, the dialectical unity of the public and the private. Whereas in practice, the *polis* could only subdue to the community a separate individual equated with the animal individual, the just State makes room for the autonomous development of the separate *ego*, which can therefore devote itself to the State as to that which justifies and supports its distinctive worth. In this way, classical political virtue is recovered on the ground of modern individualism. Hegel writes:

In the states of classical antiquity, universality was indeed present, but particularity had not yet been released, given free scope, and brought back to universality, i.e. to the universal end of the whole. The essence of the modern state is that the universal be bound up with the complete freedom of [its particular members] and with the well-being of individuals, that thus the interests of family and civil society must concentrate themselves on the state, although the universal end cannot be advanced without the personal knowledge and will of its particular members, whose own rights must be maintained. Thus the universal must be [furthered], but subjectivity on the other hand must attain its full and living development. It is only when both these moments subsist in their strength that the state can be regarded as articulated and genuinely organized.<sup>79</sup>

Herein too lies the fundamental difference between Hegel's just State and totalitarian states. The difference cannot be overstressed, for there are undoubtedly commonalities that attracted Italian fascists, moved British liberals to denounce Hegel's State as a model for the Nazi *Volksstaat*, and seduced communarians into embracing Hegel as a fellow-critic of liberalism.<sup>80</sup> The commonalities stem from Hegel's rejection of social contract theories of political obligation. Hegel's State is not unilaterally servient to an individual ego thought to be a right-bearer outside it. Its authority is not justified as securing or perfecting the rights of naturally insular and apolitical persons. On the contrary, the State dissolves the insular person's security, claiming an authority to expropriate its holdings for the common good and even to command the risk of life for its defense. Against the isolated ego, Hegel says, the State has "supreme right," for it is the worth-claiming ego's natural end. Accordingly, there are no pre-political rights held against the State, and if such rights are considered the hallmark of classical liberalism, then Hegel is not a liberal in the classical sense.

Nevertheless, Hegel's State does better at protecting individual rights than the state of classical liberalism; indeed, it can be said to perfect that state. To see this, consider first that Hegel does not simply invert the order of end and means, unilaterally subordinating the individual to the primacy of the collective will, as totalitarian ideologies do. True, he begins by affirming the collective will's logical priority. In place of the individual ego's priority in classical liberalism Hegel puts the priority of the Ethical Idea – of the objective Will whose authority is realized in the ethical life of a people. But because the Ethical Idea (being self-contradictory alone) conceptually releases the separate ego from its logical priority for the sake of its independent confirmation as the form of Right, its *erased* priority is the conceptual source of the individual ego's private rights *vis-à-vis the collective will*. So, whereas totalitarian states are so called because they permit no autonomous private sphere where separate egos realize themselves as independent ends, Hegel's State encompasses such a sphere as a space for the Ethical Idea's confirmation through the separate ego's spontaneous conation. That it does so, Hegel says, is the source of its great power to attract the devotion of its subjects, hence of its "prodigious strength and depth."<sup>81</sup>

Now contrast this to the outcome of classical liberalism's social contract. Here the differences among social contract theorists are unimportant, for they

all come to the same authoritarian result. Beginning from moral anarchy (where everything is permitted), classical liberalism justifies the surrender of individual rights of unilateral right-determination to a collective sovereign, which then becomes a despot of one kind or another. The individual gains protection for its person and holdings against other individuals but is now juristically defenseless against the public authority to which he ceded his right to determine his rights. The sovereign is either the source of right and wrong, in which case it cannot wrong its subjects; or it cannot do right as a general will except under a unanimity rule that reinstates moral anarchy; or its supreme commander is the sole judge of whether its actions conform to the general will, in which case it is legally unaccountable for its wrongs. Having surrendered its right to act on its private judgment about right and wrong, the subject's treating a law as invalid because unjust now seems inconsistent with political sovereignty; it implies either a relapse into anarchy, or, if a court decides, a usurpation of sovereignty by a subordinate, law-applying body. Thus, versions of social contract liberalism always end up as versions of legal positivism. The rightness of a law is one thing, its validity another.<sup>82</sup>

For Hegel, by contrast, there are no natural rights in a stateless condition and so no pre-political rights to unilateral right-determination that must be alienated to constitute a public authority. Hence there is no necessity for the public authority that legislatively defines rights to be the unreviewable arbiter of whether its definitions accord with rights as they are. Since the State is the free being's natural end, a stateless condition cannot be a locus of naturally rightful liberties whose surrender for the sake of order creates an untrammelled legislative sovereign.

This does not mean, however, that there are no naturally rightful liberties. On the contrary, the individual's rights to its person, acquired things, and contractual freedom are *ab initio* internal to the State; and they are solidly because conceptually grounded in the Ethical Idea's self-impetus to realization in the separate ego's striving to confirm its end-status in socially recognized claims to free agency and exclusive possession. In other words, what classical liberalism calls the state of nature is for Hegel internal to the self-divided State. That for him is the real state of nature – where free beings naturally belong. Accordingly, in renouncing to this State the putative (and vanishing) rights of a stateless condition, the individual receives them back, not only against other individuals, but against the public authority itself. As but one part of the State, the public authority is legally constrained by the other part – the sphere of private rights. It may limit those rights, but only to the extent necessary for achieving the self-determination of all; private rights and the common good are *mutually* subordinate.<sup>83</sup> So, if a positive law unjustifiably (for a special interest or needlessly or excessively) infringes a private right, then it is invalid as law; and if a court, acting as umpire between public and private sectors and applying the law of their mutual subordination, judges it to be invalid, the subject is under no obligation to obey it. Thus Hegel writes: "it is only in virtue of [the]

identity between inherent right (*Ansichseins*) and positedness that positive law has obligatory force.”<sup>84</sup> In the constitutional State, an unjust law is invalid as law. In this way, Hegel’s State overcomes all traces of social contract liberalism’s legal positivism and authoritarianism. That is the sense in which Hegel’s end-in-itself State perfects the state of classical liberalism.

### 3.2 *The Constitutional Division of Powers*

At the stage of civil society, the just State’s realization took the form of a cunning of Reason whereby the progressive reconciliation of public and private spheres occurred as the unintended result of action aimed at the individual ego’s self-validation as an end. As we saw, the means to this reconciliation were the institutions of civil society reflecting the intertwining of universal and particular wills in the Ethical Idea – the market, due process in the administration of justice, the welfare state, and corporations. To everyday consciousness, these institutions were explicable in terms of the human struggle for self-determination vis-à-vis nature and the external state; to the philosophic eye, however, they were the “glimmerings” of the just State in a civil order otherwise given over to egoism, external dependency, class antagonism, and the conflict between state and society.

Within the just State, however, the opposition between philosophic and everyday consciousness – or between the primacy of the objective free Will and that of the individual ego – has been overcome. “The state is rational in and for itself [i.e. both inherently and objectively],” writes Hegel, “inasmuch as it is the actuality of the substantial will which it possesses in the particular self-consciousness once that consciousness has been raised to consciousness of its universality.”<sup>85</sup> That is to say, once the separate individual ego has been educated to the basis of its rights in Spirit (in the Ethical Idea’s conceptual need for confirmation through individual self-seeking), the self-actualization of the Whole takes a different form. No longer an unconscious process occurring behind the back of human actors, the Ethical Idea’s realization is now a self-consciously organic process wherein the Whole differentiates itself into powers of state and perpetually reproduces itself as their unifying ground. So instead of a glimmering of the Ethical Idea, political life becomes the clear image thereof.

Now, the self-differentiation of the Whole such that it remains the self-conscious ground and end of the distinguished parts is the rational constitution as vivified in the ethical dispositions and actions of people who play a role in it. The rational constitution is the well-ordered constitution. It is well-ordered in the sense that no part is supreme nor are equal parts in conflict. Rather, they are complementary organs of a totality whose integrity is sustained by each organ’s keeping to its special function so that the others can excel in theirs. In the result no part is partisan; each sustains the rest and therefore the Whole, which alone is supreme.

The seat of the Whole is the free Will in the fullness of its notion. Rational constitutional law is just the inward conceptual necessity whereby the State

differentiates itself into powers in accordance with the logical moments of the free Will and maintains itself as the unity and end of the bodies exercising these powers. "The constitution is rational," writes Hegel,

in so far as the state inwardly differentiates and determines its activity in accordance with the *nature of the concept*. The result of this is that each of these powers is in itself the *totality* [of the constitution], because each contains the other moments and has them effective in itself, and because the moments, being expressions of the differentiation of the concept, [simply] remain in its ideality and constitute nothing but a *single individual whole*.<sup>86</sup>

Concerned as it is to determine the institutional conditions for the State's wholeness, the rest of this section can be considered an extended commentary on the last-quoted paragraph.

Let us begin with Hegel's theory of the origin of the rational constitution. The latter has its source, he says, in the self-development of the objective free Will from Notion to actuality, hence in the self-division of the Whole into organs and their powers corresponding to the logical elements of the Notion. This means, for one thing, that in the well-ordered constitution, the familiar division of powers is no human artifice; it follows the natural division of the free Will into its three logical moments. Presently, we'll review these moments and see what state power corresponds to each. First, however, let us bring Hegel's account of the rational constitution into relief through a contrast.

The division of powers under rational public law must be distinguished from the separation of powers advocated by Montesquieu and the American Federalists. Both systems aim at the state's impartiality, but one hits the target, while the other produces a simulacrum. Under the separation of powers, political authority is parcelled out to self-interested and mutually external bodies in order that each might have the means to block the feared tyranny of the other. The idea is that a legislative majority will be checked if it cannot enforce its laws; a judge's discretion will have limited reach if it can range only from case to case and if the court cannot enforce its judgment; and the enforcement branch will be less dangerous if it can't originate the laws it enforces. Thus, freedom from tyranny is sought, not by cancelling particularism in wholeness, but by confronting it with countervailing particularisms. Mechanistic forces of nature are enlisted to the service of civic freedom. However, the downside of this strategy is the state's decomposition and paralysis. Except during war (when the legislature and judiciary cede extraordinary powers to the executive), there is no whole, no universal will, no state. Deadlock and inability to govern are signs that the constitution is working as planned.

Under rational public law, by contrast, the powers of state are related, not as mutually external checks, but as mutually complementary organs of a political body each of whose impartial functioning presupposes, depends on, and supports the impartial functioning of the others. Because, in other words, the division of powers originates in the rational self-division of the Whole



in accordance with the *objective* elements of freedom's Notion, each power's impartial functioning depends on keeping to the role the Notion assigns it and on the others' keeping to theirs. What corrupts is the meddling of one power in the function of another – the head of state's interfering in the impersonal application of law, the legislature's making a law applying to a particular individual or group, the executive's independently issuing an order binding on all. In the well-ordered constitution, then, the body in which a power of state is vested minds its own business with a view, not to checking the others' partiality, but to confirming their impartiality; and the consequence of this mutual support is the reproduction of the Whole in the activity of its parts. The constitution is an organism rather than a machine.

To determine the constitutional arrangements given which the Whole's realization can be a matter for philosophy alone, we must ask how the bodies exercising the state's powers must be structured so as to perform impartially the function the Whole assigns it. First, however, let us recall the logical elements of freedom and let us see what constitutional power corresponds to each.

The first element, again, is universality. The Will becomes free by detaching itself from the particularistic interests given by nature and that make it dependent on an external other and by willing only what all free wills could will for themselves – the sum of the laws of equal freedom. Corresponding to this element is the legislature, which is the power to make laws for the freedom of all.

The second element of freedom is particularity. Withdrawn from the interests given by nature, the universal will is self-contradictory, for it is now something particular alongside the nature from which it withdrew and that seems to obey laws of its own. So the universal will is genuinely such only in cancelling the apparent independence of natural self-seeking – only in transforming what seems alien to laws of freedom into the medium for freedom's embodiment. This movement requires a power to apply the law to particular cases and to bring the sphere of particular interests under the rule of law. But for the universal to actualize itself in this way it must act, and to act means to determine itself in positive orders and judgments lacking universal validity. The second element of freedom is thus the particularity inseparable from the self-actualization of the universal will. The state power corresponding to this element is the executive, which is the power to subsume single cases and the sphere of particular interests under the universal.

The executive branch is thus quite broad. As the power to realize and make concrete the universal, it encompasses both the judiciary and the bureaucracy – both the administration of justice and the administration of policy. In the well-ordered constitution, there is not the separate judicial branch that we find in the checks-and-balances constitution.<sup>87</sup> Indeed, so broad is the executive function that it extends even to a role in law-making, which, after all, involves the determination of the common good in laws designed for specific exigencies. So, the highest echelon of the executive – the cabinet – puts forward bills for the

legislature's approval.<sup>88</sup> Still, the executive's function is limited to judgment. It applies the general to the particular theoretically but has no power of fiat wherewith to will into legal effect a discretionary judgment.

The power of fiat rests with the third moment of freedom – the moment of oneness or totality. This element is the interpersonal bond revealed by the mutual dependence of the first two. Because the universal will presupposes the particular for the realization of its universality, the particular will in turn presupposes the universal as the ground of its rational necessity. The third moment of freedom is the Whole formed by the interdependence of poles each of which is immanent in the other. So the free Will is neither the universal will nor the particular will considered separately but the unity-in-difference or dialectical fusion of both. The institutional expression of this fusion of opposites is the Crown. The latter thus embodies the State's wholeness, and yet, since wholeness is a third moment, the Crown also embodies a distinctive element of the Whole. As the expression of the State's wholeness, the Crown is the source and unity of all three powers; the legislature and the executive act in its name. As a distinct element of the Whole, the Crown is uniquely the power of "subjectivity ... the will with the power of ultimate decision."<sup>89</sup>

So now we come to the feature of Hegel's political philosophy that suggests most strongly a surrender of critical reason to historical fact – the raising of monarchy to a necessary element of the just State. The State in accordance with the Ethical Idea – the perfect State – is not, Hegel argues, a democratic republic. It is not even open to variation as between a democratic republic and a constitutional monarchy. It *is* a constitutional monarchy. In the following sections I try to make sense of this perplexing claim.

### 3.3 *The Puzzle of Hegel's Monarchy*

It is not difficult to see why the power of sovereign decision must rest with the institution embodying the State's unity. The indeterminacy of legislative and executive judgment leaves room for subjectivity in the exercise of discretion. The subjectivity inherent in judgment – in applying the universal good to particular exigencies and laws to particular cases – is compatible with the State's impartiality if, and only if, it is nothing but the *residual* subjectivity *necessarily* involved in the universal will's otherwise principled self-determination. But subjectivity has this significance only if it is the subjectivity belonging to the State as a Whole. The subjectivity of a part is a partisan subjectivity. Yet where is the assurance in constitutional law that the subjective arbitrariness of a legislative or executive (including judicial) decision will be just the benign arbitrariness inherent in the universal will's self-determination and not the caprice of the decision-maker giving effect to a special interest? The answer is: in separating the power of fiat from the particular bodies that exercise legislative and executive judgment and by locating that power in an office that speaks for the Whole. In effect, the Crown takes the subjectivity of the State's other parts onto

its shoulders and purifies it, thereby supporting the objectivity of what they do. That is not a sufficient condition of their objectivity (we'll discuss other conditions presently), but it is a necessary one.

While it is thus understandable that Hegel would locate the power of sovereign decision in the institution embodying the State as an Individual (a One), it is not immediately clear why he subsequently asserts that "this absolutely decisive moment of the [W]hole is not individuality in general but *one* individual, the *monarch*."<sup>90</sup> It seems that Hegel wants to identify the State's will with that of a single individual exclusive of others in the way that Christianity identifies God's incarnation with a single individual; yet this is just what Hegel described in the *Phenomenology* as humanity's self-estrangement. Nor do the problems stop there. Not just any monarchy will suit the Ethical Idea, he argues, but only hereditary monarchy. The single individual in whom the State is incarnate must be raised to office solely by virtue of an accident of birth; moral qualities such as practical wisdom and rectitude are irrelevant. The just State is not even open to variation as between an elective or hereditary monarchy. It is a hereditary monarchy. The objection to such a sovereign is an obvious one: what guarantee is there that the subjective arbitrariness of the monarch's decisions will be only the necessary and residual arbitrariness involved in the principled application of the universal to the particular and not his/her personal and self-interested caprice?

Hegel's attempt to portray hereditary monarchy as a necessary feature of the just State has met mostly ridicule. Marx, for example, charged that Hegel converted "all the attributes of the contemporary European constitutional monarch into absolute self-determinations of the will," thus twisting "empirical fact into a metaphysical axiom."<sup>91</sup> Herbert Marcuse argued that Hegel's rationalization of hereditary monarchy constituted a betrayal of his philosophical principles, inasmuch as it "surrenders society to nature, freedom to necessity, reason to caprice."<sup>92</sup> Liberal critics of Hegel have found his justification of monarchy equally obnoxious. For both Rudolf Haym and Karl Popper, the support given the Crown in the *Philosophy of Right* epitomized the worst features of Hegel's theory of the state: its immersing existence in logic, its surrender of critical reason to the empirically given, its accommodation to the Metternichian backlash to the French Revolution.<sup>93</sup>

Defenders of Hegel's rationalization of monarchy have not helped his cause. They point out that Hegel's monarch, though formally supreme, is in reality a figurehead, having nothing to do but "to say 'yes' and dot the 'i'."<sup>94</sup> The real work of governing is performed by an independent executive responsible to an elected assembly. This is true, but the question then arises: why did Hegel, after divesting the Crown of effective rule, maintain it as the fountain of constitutional power, deriving the authority of all other bodies from it? Why, if its powers have devolved on bodies accountable to the people, did he not straightforwardly assign sovereignty to the people speaking both through parliamentary deputies and an elected or acclaimed head of state who transforms

Parliament's majority opinion into the state's will? Why, in short, does Hegel rationalize a powerless sovereign?

Shlomo Avineri answers that Hegel retained the monarchy as a "symbol of subjectivity," because this must have seemed to him "the only effective way of combating the old absolutist idea of monarchy and the legitimist theories of the Restoration."<sup>95</sup> The difficulties in Hegel's account of monarchy are thus disposed of by interpreting it as a political tactic designed to secure the blessings of republicanism unnoticed. K.-H. Ilting explains the paradox of a powerless sovereign by arguing that Hegel really has two theories of monarchy: an "authentic" liberal one to be found chiefly in the Berlin lectures on *Rechtsphilosophie*, and the authoritarian one of the *Philosophy of Right*, which evinces Hegel's accommodation to the censorship imposed by the Carlsbad Decrees.<sup>96</sup> In the lectures, the state is a republic with a relic of monarchy as the formal head of state; in the book, the state is a monarchy. In this way, Hegel's monarch is made to appear familiar and commonplace, while precisely what is provocative and original in it is explained away.

Interpretations of Hegel's theory of monarchy along conventional democratic-republican lines fail in yet another respect. As defenses of Hegel, they fail to answer the common objection that Hegel exalts the historical accidents of the modern state into metaphysical necessities. From the standpoint of a charge of panlogism or that Hegel surrenders critical reason to the *status quo*, it makes little difference whether the state he anoints is a reactionary one or one that embodies a compromise between reactionary and republican forces. Any reduction of an empirical state to the categories of a transcendent logic must be self-defeating for Hegel's political philosophy, and this for reasons well understood by critics such as Marx and Marcuse. First, the absolutization of the empirical constitutes the decisive self-negation of a philosophy that intends to vindicate the cosmic authority of the rational; second, the philosopher's proclaiming as rational and eternal what for ordinary consciousness remains an historically contingent compromise belies by its very one-sidedness Hegel's claim to knowledge.

The rest of this chapter tries to elucidate Hegel's theory of constitutional monarchy and to show how a sensible person could take it seriously. Specifically, it tries to render intelligible Hegel's claim that Crown sovereignty is essential to the perfectly constitutional (rule of Law) State – the one that reflects adequately the Ethical Idea and that, in doing so, consummates history from the Idea's point of view. I shall not burden the reader with yet another defense of Hegel against charges of Prussianism, for this issue has largely been settled. Rather, I shall be concerned with the more controversial questions of whether Hegel's account of constitutional monarchy divinizes a variable form of the modern state and proclaims an end of history achieved by unassisted human agency. In arguing that it does not, I shall invoke Hegel's doctrine of mediation in general and the mediating role of philosophy in particular. Hegel (we'll see) does not identify a temporal with the final state because he does not identify

the modern with a fully constitutional monarchy. He recognizes a gulf between them, one impassable except with transcendent aid.

### 3.4 Hegel's Critique of Popular Sovereignty

Hegel's justification of Crown sovereignty is best brought into focus by considering his critique of popular sovereignty. That critique, we may point out in passing, is not confined to the 1821 *Philosophy of Right*; it can be found even in those of Hegel's works published during the reform era in Germany, a fact which should embarrass any attempt to distinguish between Hegel's supposedly authentic, republican teaching on monarchy and one later accommodated to the Restoration. Indeed, Hegel's most developed critique of republican democracy occurs in a book generally conceded to be the one that, of all his works, betrays most clearly the spell of Napoleon – the *Phenomenology of Spirit*.

Let us then recall from the previous chapter the critique of popular sovereignty implicit in Hegel's treatment of the French Revolution in the *Phenomenology*. The modern doctrine of popular sovereignty assumes the moral self-sufficiency (dignity alone) of the individual ego, hence the naturalness or fixed reality of the atomistic ego. On this view, the people are a mass of individuals – a multitude. Now given this atomistic starting-point, the particular ego is equated with the isolated ego whose ends are selfish. Therefore, the people's general will must be reached by abstracting from the particular will as such into the pure or impartial will of each atomistic ego. This means that, where the people *en masse* are sovereign, the test of impartial law is whether the purported law is a possible object of a universal legislation – whether each individual ego could rationally impose it on itself.

However, this test is impossibly stringent. True, it can be met by the abstract principles of right typically embodied in a constitutional bill of rights – that every person is equal before the law, that there is a legally unmediated right to the freedoms (speech, conscience, association) that are inherently consistent with the equal freedom of others, a right against extra-judicial force, and so on. However, any positive act of the legislature or executive will fail the test. This is so because legislation and administration involve the concretization of abstract principles of right in determinate laws and the application of laws to particular cases, both of which processes necessitate decisions in some degree arbitrary in character, contextually limited in their validity, and uneven in their impact, for they are decisions to do “this” instead of the equally reasonable “that.” *Omnis determinatio est negatio*, says Spinoza, and Hegel agrees. The question is: where is this power of arbitrary decision to lie, and how can it be reconciled with the objective and impartial rule of law?

We can return to the theme of Hegel's synthesis of ancients and moderns by observing that Hegel sees this problem as coeval with the dawn of political philosophy. In pre-Enlightenment Greece, the subjective arbitrariness involved in political judgment was not considered a rationally necessary moment in the self-determination of the *nomos*. It was rather seen as illustrating the residual

influence on human affairs of the non-rational, of the brute nature lying beyond the pale of human freedom in the *polis*. For this reason, the Greeks ceded their leaders' discretionary power to fate, whose will was revealed through external signs such as oracles and auguries.<sup>97</sup> The suppression of human subjectivity here implied went together with the sovereignty of *nomos*, understood as a divinely originated body of immemorial custom. Based as it was on sheer givenness, the authority of custom and oracle could not survive the awakening with Socrates of critical reason, but neither could the rule of law as such. The place of law (equated with *nomos*) was taken by Socrates's daemon or inner voice. Because, moreover, Socratic autonomy required the philosopher's taking back from the oracle the power to decide, it engendered a dichotomy between the intelligent but personal rule of the best men and the impersonal but inflexible rule of law, together with a question as to which is preferable. Plato and Aristotle mediate the either/or in different ways, but neither overcomes it in a synthesis that reconciles the discretionary authority of human beings with the rule of dispassionate and impartial law. For Plato, the rule of minutely particularized law is second best to the free rule of the wise, while Aristotle thinks that the best men should rule through general laws as far as the law's generality takes them except in cases where applying the law's letter would defeat its underlying purpose.<sup>98</sup> There is as yet no inkling of Law (*Recht*) ruling without taint of partisanship through men.<sup>99</sup>

The tension between subjective discretion and impersonal justice persists into modernity with the sovereignty of the general will. Here the need for an undetermined decision conflicts with the requirement of a valid command that it be capable of a universal self-legislation. Insofar as the executive wills something contingent, it ceases to will what all would will for themselves and so becomes, from the standpoint of those adversely affected by the decision, an external power enforcing a special interest. Thus the executive appears inherently corrupt. But the assembled people too are corrupt, for in making the self-legislation of each the condition of law's validity, it has elevated private judgment above objective right and therewith disintegrated into its atomistic elements. Accordingly, where the people *en masse* are sovereign, the executive cannot escape the appearance of being a faction; nor can the popular body, in exalting everyone's private judgment as the arbiter of right, present itself as anything other than a mob or a site of conflict between partisan coalitions. At best, this mutual distrust leads to a regulated conflict between the legislature and the executive; at worst, to deadlock, inability to govern, and the republic's surrender to a dictator.<sup>100</sup>

To sum up: popular sovereignty results in faction and more or less controlled civil conflict because in tying the general will to the immediate individual, it must define the former so abstractly as to be incompatible with the particularity and contingency necessarily involved in the general will's determination; and because, in anarchically equating the self-imposability requirement of valid law with its endorsability *by each individual's deliberative judgment*, it forces

the sovereign to come forward as a power that is unaccountable simply, one to which all resistance is impermissible. So, popular sovereignty is incapable of reconciling to the objective and impartial rule of law either the power of subjective decision or the autonomy of the subject.

Hegel's claim is that Crown sovereignty is a necessary condition of both reconciliations. Hence it is a necessary condition of a true *Rechtsstaat*, understood as a State in which the rule of men is cancelled in the sovereignty of a Law connecting the universal will with human decision-making without loss to its impartiality. Such a State would, as Hegel says, signify a return to the ancient independence of *nomos* (*Sitte*), but to an independence which, in contrast to the *polis*, accommodates subjective discretion without detracting from Law's objectivity.<sup>101</sup> It would also (recalling Aristotle's statement that "he who bids that law rule may be deemed to bid that God and Reason alone rule") be a State entitled to be called the "divine Idea on earth."<sup>102</sup> But that constitutional monarchy is this ideal, or, indeed, that any actual regime can embody it, seems at this point an extravagant claim. Let us see how it can be justified.

### 3.5 *The Crown-as-Monarch*

We have already seen that, freed from the natural individual, the free Will's notion unites subjective arbitrariness with the universal will as the conduit through which the universal will must pass in order to realize its normative authority through governance. In the objective Notion alone, then, is subjectivity conceptually bound up with the universality of Law so as to remain pure – a non-partisan subjectivity. Therefore, Hegel argues, if the power of final decision is to be rendered compatible with Law's rule (if it is to "fall within the sphere of human freedom"), it must be placed in an organ likewise independent of the will of natural individuals and raised to a "pinnacle" above all particular interests.<sup>103</sup> The Crown is this pinnacle. It thus institutionalizes the "majesty" of the Notion, its independence of human opining and willing; and this independence is a condition of the State's impartiality, for the State is thus freed from the individualistic starting-point that causes an antithesis between the universal and the particular, fragmenting the state's powers and making impartial governance impossible.

At this point one might expect a justification of *hereditary* monarchy in terms of its advantages in safeguarding the Crown's independence from factional interests, but it is not primarily this prudential argument on which Hegel relies. Rather, he says, the Crown is embodied in a particular individual assigned to his function by birth because the free Will's Notion precisely unites what is utterly particular and accidental with universality and necessity. It is thus not prudence merely, but the Notion that dictates hereditary monarchy. In the State conformable to the Ethical Idea, the moment of dialectical fusion between the conceptual universal and the accidental particular must have adequate embodiment; and so the State must express itself through one whose title rests on a qualification pertaining to nothing beyond the accident of lineal descent.<sup>104</sup>

Accordingly, the monarch's particular will counts, not as the private particularity of his natural person but as the objective particularity belonging to the Notion. His decisive "I will" is not his undetermined will to do as he pleases but rather the universal will's – Law's – self-determination. Thus, the monarch's power of ultimate decision presupposes the other two moments of the State: the application of universal freedom to particular circumstances and the application of laws to particular cases.

However, all this leaves one glaring problem unresolved. The public or objective side of the monarch's arbitrary will is not the only one. There is also a private side – Elizabeth's will – that cannot be eliminated merely by the assurance that in the free Will's Notion it does not exist. Of course, the monarch's will *might* signify nothing but the self-determination of the universal will, but there is as yet no guarantee of this, particularly since, as a hereditary ruler, his mental and moral qualities are irrelevant to his accession. Moreover, even the most upright and enlightened of autocrats could never rule in the best interests of the State objectively considered, but only according to his opinion of what this interest demands. What all this means is that the full difference between universality and particularity is encompassed neither in the abstract Notion of the free Will nor in the monarchy which is its constitutional expression. The arbitrary decision to will this instead of that must come from a flesh-and-blood individual – Elizabeth, say; yet Elizabeth is not contained in the Notion.

However, the foregoing criticism need not be directed against the Crown by us, for it is one with which the Crown-as-monarch reproaches itself. Implicitly or in essence, the Crown is a totality embracing the difference between the universal and the particular will. Actually, however, it is a one-sided universal – a *Notion* of freedom – in relation to which the existential particular is an exterior and therefore corrupting element. In essence a "we" in whose particular will the universal is immanent, the Crown is thus far actually a natural "I" in whose particular will the universal is negated. Taken in isolation, therefore, the Crown is self-contradictory; its existence as an autocrat contradicts its implicit nature. That is why, when it first appears, Hegel's monarch is described as "abstract" and as "subjectivity-sure-of-itself" – terms implying a deficiency, for abstract means detached from the Whole of which it is a part, and the subjective certainty of one's purity is not yet knowledge.

Now, because of this internal deficiency, the Crown-as-monarch is inwardly moved to self-development – to become explicitly the totality that it is implicitly. It is impelled, in other words, to divide itself, to allow each of its powers an independent (though not inorganic) existence, in order that the full distinction between the universal and the particular might be posited as an internal or rational distinction. In the course of this division, the monarchy will, on the one hand, reduce itself to one element of a constitutional Whole – the element that wills into effect the legislature's bills and the executive's orders; and, on the other hand, it will gain confirmation for the purity or impartiality of its



arbitrary will. The rational constitution will thus be the ensemble of proofs necessary and sufficient for converting the monarch's subjective certainty of the purity of his arbitrary will into knowledge of truth.

We can now begin to make sense of Hegel's controversial claims on behalf of monarchy. In particular, we now see that the constitutional monarchy that Hegel calls "the image of eternal Reason" is organically developed from the Crown in obedience to the law of the latter's nature to be whole and not partial, so that sovereignty will reside only in the developed totality. It is not the historical compromise between monarchical and republican elements that today passes for (or, perhaps, shows forth obscurely) constitutional monarchy and that vests sovereignty in an elective legislature. No doubt, Hegel views constitutional monarchy as "the achievement of the modern world," pointing, one might think, to that compromise. But one must bear in mind the type of regime to which he is referring here, and one must read this assertion in light of the distinction between the implicit and the explicit. Hegel's 1817 essay on "The Proceedings of the Assembly of Estates in the Kingdom of Württemberg" throws light on the sense in which constitutional monarchy as he understands it is the modern world's achievement.

In that essay, Hegel makes clear that the constitutional monarchy he sees as the image of Reason has been attained in the modern world implicitly or in embryo, but not yet in its full development. Moreover, the seed was planted not, as one might have supposed, with the revolutions of 1688 or 1789, but with a marriage between the French Enlightenment and the Protestant Kingdom of Prussia. The germ of constitutional monarchy is historically represented for Hegel by Frederick the Great. The development of this germ was initiated by yet another mating between France and Germany, this one involving the reception of the principles of 1789 by German kingdoms that themselves championed these principles against feudal privilege. "There surely cannot be a greater spectacle on earth," writes Hegel of the reform period in Württemberg, "than that of a monarch's adding to the public authority, which *ab initio* is entirely in his hands, another foundation, indeed *the* foundation, by bringing his people into it as an essentially effective ingredient."<sup>105</sup> Evidently, the constitutional monarchy that Hegel sees established in principle by modernity begins logically from the Crown, whose authority descends to, rather than derives from, the people. That is why the countries to which he looks for further development are not England or France, but Bavaria, Württemberg, and Prussia, where the liberal reforms spread by Napoleon were being implemented as self-limitations of an erstwhile dominant Crown. The point here is that Hegel is far from identifying a constitutional monarchy of the British or Orléanist type with the paradigm of modern constitutional monarchy; hence he is not guilty of absolutizing a contingent compromise between monarchy and republicanism. Nor is he identifying the modern paradigm with the constitution of fully developed Reason; rather he identifies it with the rational constitution in germ. The limitations of the modern paradigm will become evident in a moment.

At this point too we can understand more fully Hegel's claim that Crown sovereignty is the basis for the State's impartiality. Earlier we understood this claim in a negative way: the Crown's transcendence frees the State from the atomistic starting-point that leads to fragmentation. Now we can understand it positively as well. The Crown-as-monarch, considered as the institutional expression of the Free Will's Notion, is the logical *starting-point* (hence "apex") of the just State, because from this self-contradictory beginning alone can the extreme distinction between the public and the private, the universal will and the particular will, remain a distinction within a Whole; hence from this beginning alone can the State stay unified in the differentiation of its several parts. From the standpoint of the Notion, the divisions of the State become the inwardly necessary and jointly sufficient means by which the Crown's conviction as to the purity of its will is objectively validated. That, as we'll see, is the story-line of the rational constitution. Accordingly, no contradiction exists between Hegel's conception of the monarch as a figurehead and his view of the Crown as the source of constitutional authority; hence there is no need to invoke the Carlsbad decrees to explain a contradiction. It is precisely through the self-division of the Crown into an independent executive and a representative legislature that the monarch's power is reduced to the merely formal one of promulgation.

Nevertheless a problem emerges from what we have said so far. The kingdom that embraces the extreme difference between the universal and the particular will cannot be a human kingdom alone; for extreme difference is the difference between two separate agencies, and no human agency can encompass that difference. A Whole that inclusive must be both divine and human, where a divine intermediary connects the universal and particular poles of human self-consciousness. In history, however, human agency is anthropocentric, so that the latent divine-human unity is mediated by a cunning of Reason whereby humanity advances that unity unconsciously. It is Reason's cunning, in other words, that ensures the dialectical character of the divine-human nexus, guaranteeing against a pantheism that submerges human difference, on the one hand, and against a humanism that denies transcendence on the other. Yet if history were ever consummated by cunning; if, that is, constitutional monarchy were fully realized by human action pursuing human goals, then the distinction between the divine and the human would forthwith collapse. A temporal, human state would have been identified with the kingdom of God. Thus what guarantees the divine-human distinction in history dissolves it when applied to the consummation of history. And this dissolution would spell disaster for Hegel's philosophy, if only because it would preclude the concord it intends between philosophy and religion and between the State and religion.

However, if Reason's cunning brought mankind only to the threshold of constitutional monarchy; and if the ultimate realization of this kingdom required, not further human action in blindness, but human deference in the light of knowledge to a divine purpose, then the divine-human difference would be

preserved even as their unity would be explicitly realized. It remains to be seen, then, how Hegel envisions the final realization of constitutional monarchy.

### 3.6 *The Crown-in-Council*

We said that the rational constitution is the ensemble of proofs necessary and sufficient for validating the monarch's claim that his arbitrary will is pure. Let us now follow this narrative.

At the very least, proof that the monarch's fiat is nothing but the universal will's self-determination requires that the State's executive function be released from his personal will without this implying, however, any loss to the Crown's sovereignty. Essential, therefore, to the Crown's impartiality is an independent and professional corps of civil servants devoted exclusively to the intellectual task of subsuming particulars under universals, while leaving the power of fiat to the monarch. He in turn must keep out of the objective administration of justice by courts and of legislative policy by bureaucrats. So, whether or not the monarch's fiat is compatible with the Crown's impartiality will now depend on the existence of institutions that guarantee the objectivity and impartiality of the executive. What are these institutions?

The function of the executive is by nature objective, involving as it does the application of pre-existing laws to particular situations, though subjectivity will have play in the space left open by indeterminate universals. So, guaranteeing the objectivity of the executive branch is a matter of ensuring the disappearance of the civil servant's subjective will in his function, leaving the monarch to take on the decision's subjective component. This is accomplished partly by education to a public service ethos (here Hegel anticipates Weber's description of the form of modern bureaucracy) and partly by laws pertaining to appointment, tenure, remuneration, and accountability. The civil servant is assigned to his position neither by birth nor by family connections, but solely by virtue of demonstrated suitability for the given task. Once in office, moreover, the bureaucrat's tenure is conditional on the fulfillment of his duties and protected against the monarch's caprice and other contingencies; for the security of his livelihood removes the temptation to curry favor with the monarch, to take bribes, or to seek side-employment that creates conflicts of interest. Finally, the submersion of the bureaucrat's subjective will in his function is achieved by a hierarchical chain of responsibility for decision-making leading up via the supreme executive council to the ultimate subjectivity of the monarch's "I will." By virtue of this chain, every exercise of subjective discretion at lower levels is assumed by the monarch, who does nothing but take ownership of them. In leaving to the monarch the power of ultimate decision and in confining itself to the objective task of administration, the executive validates the impartiality of the monarch's fiat, just as by limiting himself to the formality of saying "yes," the monarch confirms the objectivity of the executive function and hence his own. "In the rational organism of the state," says Hegel, "each member, by maintaining itself in its own distinctive position, *eo ipso* maintains the others in theirs."<sup>106</sup>

Accordingly, a minimum guarantee of the Crown's impartiality is that the monarch rule, not as an autocrat, but as a monarch-in-council and that his council be the apex of a tenured bureaucracy recruited on merit and educated to an ethos of self-forgetting service. However, proof of the Crown's impartiality requires more than this, as is apparent from the wide latitude still left to both monarchical and bureaucratic discretion. The task of applying the general to the particular might be wholly entrusted to expert and dedicated officials, but it is the monarch who, with the power of ultimate decision, appoints and dismisses the officials. No doubt this power is a merely formal one when exercised on non-ministerial functionaries, with respect to whom the monarch merely approves decisions made on the basis of merit within the hierarchy. However, it is a very substantial power when applied to the supreme council, for here the monarch exercises a non-accountable initiative. The hiring and firing of ministers rests (as Hegel says) "with his unrestricted arbitrary will."<sup>107</sup>

Nor is the bureaucrat's discretion sufficiently purified by the chain of responsibility. This is so because, even if performed by a monarch-in-council, the regulation of private activity is tinged with partisan arbitrariness as long as it involves the external rule of society by a bureaucratic elite. Because the public authority thus far stands over against the particularism of society, the residual arbitrariness intrinsic to legislative and executive judgment is justifiably construed as the partisan caprice of the individuals or class – here a bureaucratic class – exercising political power.<sup>108</sup> This suspicion is focused on the fiat of the monarch, who has yet to convert his opinion regarding the purity of his will into knowledge.

Accordingly, further proof of the Crown's impartiality requires that the Crown-in-council relinquish its monopoly on public affairs and share both administrative and legislative authority with private interests. If the task of implementing public policy at the grass roots were entrusted to private associations, then the State's executive power could be mediated through the free cooperation and assent of those whom it is supposed to regulate. The consent condition of valid executive orders could thus be fulfilled in a non-anarchical way. Moreover, by coming between the central bureaucracy and the individual, the authority of these civil associations would constitute a bulwark against the domination of society by an intellectual elite. The same mediating purpose would be served by the participation of the many in the law-making function as well as in the appointment of the monarch's ministers. Although not sovereign in the rational constitution, the multitude nonetheless has a share in sovereignty through their elected representatives. This brings us to Hegel's conception of the role of parliamentary democracy in the rational constitution.

### 3.7 *The Crown-in-Council-in-Parliament*

Although not the basis of the just State, parliamentary democracy remains for Hegel an essential element thereof. His frequent polemics against the French Revolution's model of democracy should not be construed as arguments against

democracy as such. Essentially, what Hegel finds objectionable in the Revolution's model is the presumption that democracy is the essence of just rule, that it is a sufficient guarantee of civic freedom, so that popular assent given directly or through representatives is *the* criterion of valid law rather than a formal, confirming element thereof. These ideas, he argues, inevitably engender distrust and hostility toward the executive, which, lying outside the sovereign people, must appear sectarian; hence they lead to a mechanistic, checks-and-balances constitution in which the state disappears. For Hegel, Crown sovereignty, a rubberstamp head of state, and a civil service (including judiciary) that is tenured, expert, and educated to civic virtue are as essential to public freedom as democracy. More accurately, those institutions are *prior* conditions of civic freedom, democracy being but the completion thereof.<sup>109</sup> Thus, while attacking the principle of popular sovereignty, Hegel nonetheless bestows the Ethical Idea's approval on democratic institutions suitably tailored to their special role in a constitutional state.

That role is to act as mediator between an otherwise arbitrary-seeming Crown-in-council, on the one hand, and a society broken up into particular interests, on the other. The many fulfill this role by advising and scrutinizing the bureaucracy. By acquainting the higher civil servants with their special needs, they provide added insurance of the wisdom of legislation, while endowing government with the legitimacy it gains from consultation with the governed. Moreover, by acting as a watchdog on the bureaucracy, they give civil servants an additional incentive to perform their duties wisely and honestly. Still, popular participation in rule is not so much a means by which the particularism of the Crown-in-council is checked as one by which its inherent universality (already partly guaranteed by a tenured and expert civil service) is proved. In a legislature inclusive of the many, the purity of the monarch's "I will" is validated through the advice, criticism, and ultimately through the "I will" of the governed.

Problems, however, remain. For one thing, it is not yet clear how the Crown can involve profit-pursuing private associations in the implementation of social programs without abandoning the programs' intended beneficiaries to calculations inconsistent with their entitlement to benefits. Nor is it clear why the participation of the many in the legislature would mediate the conflict between the Crown and society and not simply transfer it unresolved to the political arena. If self-interested private actors are to validate the Crown's impartiality, then they must be *integrated into the Crown* as part of an expanded and more differentiated totality. Only then would the many serve an organic, validating purpose rather than an external, checking one. But how can this integration be accomplished without either compromising the Crown's impartiality or (as in totalitarian regimes) destroying the independence of the private sector? More specifically, what must the character of private actors have become before their exercise of political functions can harmonize with the State's duty to promote the common welfare? And what system of democratic representation will

guarantee that only those private interests whose voice would complete and not destroy the Crown's impartiality will obtain such a voice? Again, the issue can be framed in terms of the quarrel between ancients and moderns. How can the ancient ideal of rule by those specially qualified by their virtue and expertise be squared with the modern commitment to political equality and autonomy?

Hegel answers these questions in some of the most visionary paragraphs of the *Philosophy of Right*. Everything hinges on the corporation described above. Only if particular interests are already organized as management-labor cooperatives reflecting the Ethical Idea's fusion of the universal and the particular can they be recognized by the Crown as part of its unity without loss to the Crown's universality or the private sector's independence. Only then too can these interests be "inwardly converted into the [mind] of the State" as that which respects their independence, engages their private activity, and recognizes their political voice.<sup>110</sup> With that embryonic turn to civic-mindedness, the state's externality and repressiveness would be incipiently overcome. Accordingly, if it is to further unity and not institutionalize conflict, democratic representation must be the representation of reliably civic-minded corporations, not atomistic individuals; hence individuals must vote as members of corporations (so have as many votes as memberships) rather than as solitary persons. Were the many to enter politics as a formless mass, the result would be a harsh opposition between universal and particular wills, hence the continued isolation of the Crown. The assembly of corporations can mediate between the external Crown and the many, commending the public authority to particular self-interest, only because it also mediates between the atomistic many and the Crown, commending particular interests to the public authority.

Jarring as these constitutional arrangements might sound to those who equate liberal democracy with individualistic representation and the principle of one person/one vote, Hegel presents powerful arguments for prying apart these ideas. Individualistic representation seeks to link the *atomistic* individual to the state, yet it achieves the opposite of what it intends: it puts the state away from the individual. This is so because the atomistic individual can merge with the state's universality without corrupting it only by abstracting his pure (impartial) will *qua* citizen from his natural, self-interested will. So it is only the individual's pure will that the deputy represents; his determinate interests are expelled from the public sphere. But this means (a) that the deputy is coopted to the public point of view, standing with the Crown-in-council against society; and (b) that determinate interests fail to gain an ongoing and significant political voice in the official representative system. They might (and generally do) seek access through informal channels, but informal access is wealth-dependent, indiscriminate as to the interest's ethical quality, and hidden from public scrutiny – hence corrupting. From the licit political process the determinate individual is excluded and ruled externally from an impersonal point of view by elites of which his deputy is now a member. True, the individual has a voice on one day every four years or so, but his influence even

in a small population is minuscule to the point of vanishing. Between elections the determinate individual is ruled from on high by a political class. And this is what is called democracy.

Contrast this familiar world to one in which the internally democratic corporation is the unit of political representation. Now there is a permanent link between the State and the *determinate* individual. The individual's particular interests are strongly represented in the legislature without corrupting it because their satisfaction is now mediated through the very same ethical work for a group's welfare that the monarch-in-council performs for all. No doubt, the corporation still embodies a special interest. This is why Hegel says that corporations can enter the State as an organic element only through deputies objectively qualified for public service and who are steward-agents rather than simply agents of their constituencies. But it is precisely corporate-based representation that ensures (as far as institutions can) deputies of this quality. This is so for several reasons.

First, leadership in the microcosm of democratic corporate governance is good training for involvement in the political macrocosm; for the corporate leader must be skilled at promoting a collective good by attending to the flourishing of each member. Second, conversion to "the mind of the State" germinates from the State's recognizing and engaging the individual's self-interested activity. This it can do only if the satisfaction of self-interest is mediated through corporations. Thus, corporate-based representation promotes the emergence of civic-minded deputies who can bring their corporations into the Crown without corrupting it. This does not mean, however, a return to the deputy who represents only his constituents' pure wills, leaving their special interests outside. Because the corporation's elected deputy would himself be a trusted member thereof, corporate representation would remove the rift between deputy and elector caused by individualistic representation. The deputy would take neither the impersonal nor the sectarian point of view in abstraction. He would instead be a corporate citizen who advances his corporation's particular interests within limits consistent with the common good.

With his corporatist version of democratic representation, Hegel anticipates a political development of the twentieth century common to most liberal democracies. Because atomistic representation estranges the state from the concrete individual, the political center of gravity shifts from official, population-based representative processes to unofficial, interest-based ones. While to some extent formalized in legislative and administrative consultations with relevant groups, these processes mostly go on behind the scenes through a web of lobbying and funding activities known as interest group politics. The pitfalls of this shadow system of representation are obvious and well known. It lacks all the safeguards Hegel identifies as necessary to prevent interest-based representation from corrupting the public sphere. There is no transparency or equality of access; there is no qualification placed on admissible groups; and there are no institutions nurturing representatives to become corporate citizens rather

than lobbyists indifferent to the externalities their employers produce. By contrast, Hegel's State formalizes the representation of particular interests, brings it into the light of day, and ensures equality of access for all qualified groups. It also approves for representation only particular interests organized as ethical associations qualified for incorporation to the Crown and capable of producing the right sort of deputy. With such a system in place, a law not mentioned by Hegel would presumably be needed to ensure its exclusivity as the sole constitutionally approved method of interest group access. All influence-seeking outside the formal consultative process would have to be prohibited. Thus reformed, group representation in lawmaking and administration *can* confirm the Crown's impartiality.

### 3.8 *The Last Thing Needed*

Is the purity of the monarch's arbitrary will now confirmed? The answer depends on whether, through the representation of private corporations in the legislature, the opposition of Crown and society has been overcome. That we have now reached the critical point of our inquiry becomes apparent when we consider the implications of an affirmative answer. Were Hegel to consider the monarchy as thus far developed a perfectly constitutional one, a temporal regime whose end is human self-determination would have been equated with "the Divine Idea on earth." Not only would critical reason have accommodated itself to a historically given order; but a philosophy that proclaims the earthly fulfillment of the heaven of both the ancient philosophers and Christianity would have embraced as ideal a state instrumental to private property and corporate enterprise. Hegel's political philosophy would thus be vulnerable to the criticism leveled against it by Leo Strauss and Allan Bloom: that while announcing the realization of the Ethical Idea that the ancients wisely considered unrealizable, it degraded that Idea to the mundane state of the corporate manager – of the man who, like the Last Man portrayed with disgust by Nietzsche, hugs his natural existence. And yet, on this decisive question Hegel's position is clear:

The estates, as an element in political life, still retain ... the distinctions between estates already present in the preceding spheres of civil life. The position of the estates is initially abstract, i.e. in contrast with the monarchy or the crown in general, their position is that of the extreme of empirical universality. This position implies the possibility, though no more, of harmonization, and so the equal possibility of hostile opposition. This abstract position changes into a rational relation ... only if the middle-term between the opposites comes into existence.<sup>111</sup>

However much the particularism of the many is socialized in the corporation, it remains the latter's essential principle, and no less in the legislature than in society. Hence the conflict between Crown (universal) and society (particular), while partly mediated in a democratized legislature, is also partly transplanted to it. This residual conflict is evident in the continued separation, or lack of



a common institutional ground between, the executive and the assembly of private interests. The representative legislature mediates between the executive and the particular interests in society, but nothing as yet binds the executive with the private interests given a political voice. But as long as this opposition persists, the Crown's certainty as to the purity of its fiat is not objectively confirmed. The state is still a *Beamtenstaat* rather than a *Rechtsstaat* – a rule of bureaucrats rather than of Law, albeit a consultative and consensual one.

Given the institutions developed thus far, however, the opposition between Crown and society has, Hegel says, been completely “reduced to a semblance” – to a mere appearance of opposition.<sup>112</sup> This is so because the potential complementarity of the universal and the particular will, hitherto merely primordial, is now an historical fact. Hitherto mutually repellent, each extreme is now itself a whole that implicitly embraces the other, so that, in its continued separation from the other, each is self-consciously inadequate to its nature. Implicitly a universal including the particular will, the Crown is, in its separation from the particular interests represented in the legislature, self-contradictorily partial. Incipiently autonomous corporate citizens, deputies are, in their separation from the Crown, corporate lobbyists subject to external rule, and so are the corporation members for whom they are proxies. Thus the two extremes at once attract and repel each other. They attract each other because they complete each other's inherent nature. They repel each other because, from the non-idealist standpoint for which the natural will is first, the opposition between the universal and the particular will is still intractable.

Accordingly, the impasse can be broken only by the intervention of a mediator between the Crown-in-council and the assembly of private interests – one that, in its independence of either extreme taken separately, embraces both *qua* separate, and through which each could thus defer to the other without self-loss. *But what is thus required is the mediation of self-conscious Spirit.* The *de facto* potential complementarity of universal and particular wills is such that its actualization requires, not further human action in time, but a human deference to Spirit as revealed by philosophy. From the non-idealist standpoint, for which the natural will is first and fixed, the opposition between the universal and the particular is doubtless insurmountable. However, for the consciousness that grasps the Ethical Idea as first, this opposition is internal to one Will, the end-status of which is objective only as the process of positing and surmounting it. In Spirit, therefore, particular self-seeking is cancelled *qua* natural, yet preserved as mediated through a divine Will that requires it for its self-validation as the common good. Particular interests can thus renounce their natural liberty to a Whole wherein their autonomous existence finds its rational justification, and they can will the universal Good as that which recognizes their independence. The Crown can then too renounce its one-sidedness and, by incorporating public-spirited private interests, validate its claim to impartiality. The mutual recognition through Spirit of Crown-in-council and Parliament brings Spirit into existence as a constitutional Whole with a distinctive institutional

embodiment. In what institution, then, is Spirit existent in a way adequate to its unity?

To this question Hegel gives a disappointing answer, though one understandable in light of the historical material available in 1821. As the middle term at once independent of, and fusing together, the Crown-in-council and the assembly of private estates, he points to an upper house of the assembly composed of landed aristocrats.<sup>113</sup> We can follow Hegel's reasoning here even if we must ultimately deny its force. The gentry, he argues, is well suited to a mediating role. Thanks to their hereditary title to rank and stable capital in land, aristocrats are independent of both the monarch and the market. Yet they also unite in themselves both extremes; for in coming to political office by birth and in having leisure for public affairs, they are akin to royalty, and yet, as part of the agricultural estate, they also share the interests and point of view of the private sector. Hence they can facilitate the recognition of particular interests by the Crown. With an upper house composed of unelected aristocrats, argues Hegel, the assembly of estates would stand before the Crown-in-council less as the voice of narrowly partisan special interests and more as that of corporate citizens. The Crown-in-council could then be more receptive to the assembly's input into legislation and, by thus involving the private sector in its decisions, would in turn lose its residual arbitrariness for the estates.<sup>114</sup>

However, this solution fails. The thoroughgoing mediation of particular interests through the universal is the achievement, not of private corporations, but solely of the universal estate – the civil service. Thus the Crown is still unable to incorporate the business estate, requiring a third group – the gentry – as go-between. The gentry, however, cannot bind the Crown and the business estate into a single whole because it is a particular group alongside both. Both extremes lie outside this mediator and hence outside each other. The state remains fragmented, and it is an oligarchy of technocrats and dukes externally checked by corporate deputies. Worse, Hegel has here bestowed eternal Reason's endorsement on the political privileges of a hereditary aristocracy that was/is moribund then and dead now.

Of course, Hegel's political science was constrained by the level of constitutional development reached in 1821. Had he speculated on the kind of middle term that might eventually unify the State, he would have conceived only opinions. Since his time, the political party has emerged to bridge the gulf between public and private sectors, though not in a way that Hegel would consider adequate to Spirit. In pluralist societies committed to free thought, political parties are coalitions of interest groups around sectarian political ideologies that link ruling elites and society at the expense of the state's impartiality; the formal head of state then personifies a fictitious unity or one that materializes only in international relations and war. In one-party states, the single party legally permitted to exist is an instrument of elite surveillance and control that institutionalizes state unity only by destroying the autonomy of the private sector and suppressing ideological rivals.

In the following chapter I try to continue Hegel's narrative with the aid of historical material unavailable to him. In particular, I argue that the middle term missing from Hegel's exposition of the rational constitution is the constitutional law of basic individual rights and their justified limitations developed by courts in the twentieth century. In this law, as we'll see, the sectarian divisions among political parties in free societies become formations internal to one complex, all-inclusive Whole. For now, however, let us take stock of the conclusions to which we are entitled thus far and let's consider what reassessments of Hegel's political philosophy they require.

#### 4 Rethinking Hegel

Our study of the *Philosophy of Right* has confirmed the thesis that Hegel's science of Spirit intends to be world-changing – that it sees itself as a bridge essential to moving from the civil society of human temporality to the just State that completes divine-human history. Moreover, it performs this bridging role when, animated by a political morality of self-determination, civil society has progressed to the point where the natural (primordial, inherent) potential for state unity has become a *de facto* one, and where Spirit's self-knowledge is the one thing still needed to realize it. Philosophy's transformative role is to reveal to the incipiently complementary but still fragmented extremes of political life their objective reconcilability in Spirit in order to call forth the mutual submission of the universal and the particular will that makes reconciliation actual. At the conclusion of the *Phenomenology*, it was still questionable whether the religious-secular concord perceived by Hegel melted the opposition in political life to the point where philosophy alone could mediate it. At the conclusion of the *Philosophy of Right*, this is no longer in doubt. "The present world," writes Hegel, "has discarded its barbarity and unrighteous caprice, while the realm of truth has cast off its otherworldliness and arbitrary force, so that the true reconciliation which discloses the *State* as the image and actuality of reason has become objective."<sup>15</sup> The "German realm" has brought mankind to the gates of the perfect kingdom; it is, Hegel sometimes suggests, for America to enter them.<sup>16</sup>

The fact that Hegel's philosophy sees itself as world-changing is cause for rethinking certain commonly accepted judgments concerning Hegel's system of science in general and his political science in particular. Refuted, surely, is the view according to which Hegel's system absolutizes a temporal state, be it the Prussian, the Napoleonic, or even the ideal type of the modern ordered to the freedom and equality of self-conscious beings. For Hegel, even the most advanced state in human time is transient, because its opposition to a supposed natural egoism it must repress in order to serve contradicts its potential unity. So Nietzsche's Last Man is not Hegel's. Still, this does not mean, as many claim, that political life *per se* is consigned by Hegel to the sphere of "objective mind," wherein a finite mind confronts an alien nature, and hence to a status

lower in dignity than art, religion, and philosophy, wherein mind and nature are fused.<sup>117</sup> This is so because the thinking through which Spirit knows itself as the law of reality, while it transcends the state belonging to objective mind, also has the power, when the time is ripe, to raise this state to its perfection, to a State that itself embodies absolute Spirit – philosophy’s Church, as it were. And because it bridges the gulf between the finite (one-sided) and the infinite (dialogical) state, Hegel’s philosophy also mediates between, and makes one, religious and political life.<sup>118</sup>

If Hegel’s final state is not the modern state, then (*pace* Strauss) his philosophy does not belong to a narrative about the decay of political philosophy from the demanding ideals of the ancients to the indulgent standards of the moderns. On the contrary, it represents a monumental attempt to redeem modernity from the standpoint of the ancient ideals. Hegel’s teaching concerning the contemporary relevance of Greek political philosophy can be encapsulated as follows. The ideal *polis* of the Greek philosophers is not demanding enough for moderns, for it made no room within its organic unity for the separate worth of the individual ego. It suppressed the ego rather than integrating it into a well-ordered Whole. But neither is the ancient ideal superseded, for its constitutive ideas – the priority of the whole, civic virtue as human excellence, mind’s organic unity as the seat of political justice (all discarded by modernity at its inception) – remain valid for modernity, but organically supplemented with public respect and concern for the separate ego so as to harmonize what the ancients could not: civic devotion and love of one’s own. Thus, Hegel’s final State perfects ancient philosophy’s organicism as much as it perfects classical liberalism’s respect for the atomistic person.

The fact that Hegel’s philosophy raises the modern to the perfect State also refutes the charge that Hegel’s system is in principle quietist and escapist, whether by this is meant that it reconciles in thought what remains unreconciled in reality, or that it acquiesces indiscriminately in the *status quo*. I say “in principle” because whether or not Hegel’s philosophy is quietist (in either sense) *in fact* depends, as we’ve seen, on whether the historical conditions requisite for Hegel’s science of Spirit are present when science is offered. Having determined the institutional meaning of the ripeness of the time for Spirit, we are now in a position to make a judgment on this.

Of the ensemble of institutions whose existence defines the *de facto* potential unity of the State, only the modern bureaucracy was firmly in place during Hegel’s lifetime. Other institutions came much later. The figurehead monarchy was not established throughout Europe until 1919, nor was the welfare state broadly accepted until the mid-twentieth century. Moreover, some institutions of Hegel’s just State seem only slightly less utopian now than they were in 1821. Such, for example, are private corporations whose capital is cooperatively managed by its members for their common benefit and in which a civic responsibility is nascent; a state bureaucracy partially decentralized in such autonomous corporations; and a system of democratic representation based on

corporate, internally ethical, and incipiently civic-minded interests rather than on the atomistic individual. Though the separation of ownership and control in the widely held company has made such things thinkable, they remain a distant prospect. Accordingly, whether we consider the question from the standpoint of Hegel's time or from that of our own the conclusion is the same: Hegel's science of Spirit is premature.

A cultural observation supports the same conclusion. Recall that in the *Phenomenology of Spirit* and the *Philosophy of History*, the historical precondition for Hegelian science was said to be a cultural accord between a civic morality of self-determination aware of its human limits and a Protestantism accepting of civil society as an order whose moral regulation of nature for freedom's sake advanced a divine purpose. For Hegel in the early nineteenth century, that accord could be taken for the factual *détente* between secularism and religion that Hegel's philosophy needed to give its conceptual synthesis an anchor in life – in the public culture of post-revolutionary Europe.

Not so in the contemporary world. Even if an accord between liberalism's morality and Protestant Christianity exists, that accord can hardly be equated with one between secularism and religion in an era where secularism can no longer be equated with liberal secularism nor religion with Christianity. In the twentieth century, states arose that ceased to regard humanity as limited by nature's otherness and so as distinct from God. They denied transcendence, forced into their one-sided unity or tried to exterminate the otherness that would otherwise testify to their human finitude, and either abolished religion or sought to reduce it to a civil one. They failed, their supposed sovereignty over nature turning into a violence of apocalyptic proportions. But the collapse of absolute humanism (with which, as we saw, Hegel experimented in Jena) only emboldened its antithesis. The opposite player now holds the stage, as religion once more claims the right to use the state to enforce a subjective faith on the global scale befitting a God of pure transcendence. In a world marked by Christendom's passing into multiculturalism and by the rise of militantly anti-modern sects of Islam, the opposition between religion and Enlightenment has never seemed harsher, nor Hegel's synthesis more utopian.

Toward the end of his life, Hegel himself came to the realization that his science had been offered prematurely. Already in the 1820 preface to the *Philosophy of Right*, written after the work's completion and just after the restoration of monarchical absolutism and censorship in Prussia, he subtly amends his position on the task of a science of the state. Its role is no longer to contemplate the state as "the image and *actuality* of reason" (para. 360), but to "present the state as something *inherently* rational" and to "recognize reason as the rose in the cross of the present."<sup>119</sup> Moreover, this step backward becomes a full retreat in the Berlin lectures on the *Philosophy of Religion*. There, the historical optimism animating both the *Phenomenology of Spirit* and the *Philosophy of Right* has faded; the theme of philosophy's reconciliation with the given world is now drowned out by the – to us – more familiar one of estrangement.

The lectures conclude with a comparison between contemporary life and life in ancient Rome and with Hegel's own lament for the dominance of the Last Man:

As in the time of the Roman Empire, because universal unity in religion had disappeared, and the Divine was profaned, and because, further, the general political life was devoid of principle, of action, and of confidence, reason took refuge solely in the form of private right, or, to put it otherwise, because what existed in-and-for-itself was given up, particularistic well-being was raised to the rank of an end, so too is it now; for moral views, individual opinion and conviction without objective truth, have attained authority, and the pursuit of private rights and enjoyment has become the order of the day... The rigidity of an objective command, an external direction, the power of the State can effect nothing here; the decay has gone too deep for that...

For us philosophic knowledge has resolved this disharmony... But this reconciliation is itself merely a partial one without outward universality; philosophy forms in this connection a sanctuary apart, and those who serve it form an isolated order of priests, who must not mix with the world, and whose work is to protect the possessions of Truth. How the empirical present-day world is to find its way out of this discord, and what form it is to take, are questions for it to settle, and to deal with them is not the *immediate* practical business and concern of philosophy.<sup>120</sup>

This remarkable passage brings Hegel full circle to the Bern and Frankfurt periods of his youth. Recall that in the essay on "The Spirit of Christianity and its Fate," Hegel portrays Christ as forced to flee a world he expected to transform because of the abyss that separated Christian love from a secular world of Roman egos claiming moral self-sufficiency as persons. Moreover, this very flight and opposition to the world pervert Christian love into "fanatical bitterness," or else enfeeble it for want of concrete expression.<sup>121</sup> Similarly, in a fragment of the 1802 essay known as "The German Constitution," Hegel laments the fate of the philosopher who, in chaotic times, must console himself with understanding the necessity of what he cannot change. Here too, however, flight from the world recoils upon the thinker, who, in isolation, must endure a "lasting death."<sup>122</sup> In both instances, then, a transfiguring revelation is forced to deny its essential nature and to suffer nemesis by the unripeness of the times for transfiguration.

Exactly the same scenario repeats itself in 1831 Berlin. In the long lament quoted above, Hegel himself acknowledges the nemesis of the escapism forced upon him by circumstances. The philosophic "knowledge" that has harmonized in thought alone the discord of modern life "is itself merely a partial one without outward universality." So, what began as an attempt to reconcile a rationalist mastery of the objective world with a complete surrender thereto culminates in a philosophic construction of harmony in the teeth of actual discord. What began too as an attempt by philosophy to intervene in political life in order to raise the latter to its perfection becomes in the end a flight from political life and a refusal to "mix with the world." Finally, what began as a project to perfect philosophy through science culminates in a retreat to priestly faith.

Marx's criticism seems ultimately justified. Despite all its efforts, one might say, Hegel's science of Spirit ends up as a "false positivism" and equally as a "merely apparent criticism."<sup>123</sup>

Part of our aim in investigating the world-historical function and preconditions of Hegel's science of Spirit has been to shed light on this outcome. What has emerged from our study is the possibility that the *de facto* artificiality and quietism of Hegel's philosophy are historically conditioned rather than intrinsic to the idealist project – that they characterize Hegel's philosophy, not in its essential nature, but as conditioned by circumstances not yet ripe for it. This possibility, I'll now argue, rules out our pronouncing with certainty, as many have, that Hegel's idealism (as he understood it) is dead.<sup>124</sup>

Consider first Hegel's alleged "false positivism" – his artificial construction (under the guise of a surrender to the object) of what is as rational. The best evidence for the truth of this accusation is Hegel's rationalization of the feudal aristocracy's political privileges as the middle term uniting the Crown-in-council with society's private estates. But if Hegel is guilty of imposing a false necessity on transient institutions, his failure in this regard is qualitatively different from Schelling's. To grasp this difference, ask of each philosophy whether its falsification of reality indicates a flaw in life or in philosophy. Addressed to Schelling's transcendental idealism, that question can be answered without hesitation in the manner in which Schelling himself answered it: the fault lies in the dogmatic reductionism of a one-sided idealism. But addressed to Hegel's absolute idealism, the question admits of no certain answer. This is so because Hegel's fundamental principle already incorporates idealism's submission to the independent reality of the objective world. Because that principle embraces the distinction between Notion and existence, we must remain agnostic as to whether the ultimate artificiality of Hegel's science is a function of its idealist starting-point or of political life's failure to live up to its rational potential.

It might be objected that, if, as Hegel insists, practice is the proof of theory, then by its own criterion of truth Hegel's science stands refuted by the "discord" he describes in the passage quoted above. So argued Emil Fackenheim and Charles Taylor, who, after testing Hegel's claim for the reasonableness of what is against the Nazi horrors and capitalist excesses of the twentieth century, concluded that Hegel's science of Spirit is untenable.<sup>125</sup> Yet, if not properly qualified, the move from historical despair of Hegel's synthesis to philosophical rejection is a *non-sequitur*. The Holocaust, in which the supposedly natural end-status of a human whole (the ethnic nation) manifested itself as genocidal violence against the people historically associated with the category "outsider," marked the negation of absolute humanism. Why should the negation of absolute humanism be thought to refute Hegel's philosophical theism? Why should it not instead be understood as lending support to the thesis that, if there is an Absolute, it must be the nexus, distinct from both extremes, between the human whole and its exterior that Hegel named Spirit? And how can the

economic disorders resulting from unrestrained capitalism refute a philosophy that understands this result as the disintegration of a general will of would-be masters of nature? True, the *absence* of the historical conditions defining the world's readiness for Spirit means that Hegel's claim to *science* or absolute knowledge must be given up. But nothing in this necessity for retreat determines whether the science of Spirit must be given up absolutely or merely for now, nor whether there is a fall-back position for a Hegelian philosophy with more modest ambitions for the period of science's abeyance.

In Schelling's case, transcendental idealism had to be abandoned absolutely. This was so because, dogmatically denying the reality of whatever could disconfirm it, it was in conception an artifice. By contrast, Hegel's Spirit has internalized the exposure of theory to practical confirmation. This means that its want of practical confirmation can mean one of two things: either there is no such reality as Spirit – no primordial connection between Notion and existence – in which case civic order, if not (as for the Greeks) naturally subordinate to pure intellect, is Nietzschean will to power; or the primordial connection has yet to become a *de facto* one. The failure by its own standards of Hegel's science is indeterminate with respect to the truth of these two judgments. We cannot be sure whether Hegel's false rationalization of the given indicates the untruth of his idea or the untruth of the given. This is why Hegel's loss of historical optimism never led him to abandon his ontological optimism, causing him only to retreat from a claim of knowledge to an expression of faith. The philosophers have not despaired; they have simply become "priests."<sup>126</sup>

Consider next Hegel's "merely apparent criticism" – that is, his quietism. I have endeavored to demonstrate that Hegel's philosophy aims to transform what it passively understands – that it seeks not only to comprehend what is, but through comprehension also to change it. By no means does it intend a flight from politics, still less an indiscriminate acquiescence in the historically given. Rather, the historical function of Hegel's philosophy is to reveal to the fragmented poles of political life their objective reconcilability in Spirit in order to make possible the mutual recognition that makes reconciliation actual. Its role is thus to provide a bridge from a temporal state in which *Recht* is a perennial ought-to-be asserted against a recalcitrant human nature to a perfect kingdom wherein *Recht* is completely realized and perpetually reproduced.

However, philosophy can fulfill this role only given certain historical conditions. It can adapt itself to the existing world without alienating critical reason on the one hand or falsifying reality on the other only if human critical reason has reached the limit of its power to unify political life, and if the reconciliation afforded by philosophy is thus the one thing still needed. Should philosophy arrive and there be critical tasks still to accomplish, then it has arrived too soon. Unable to adapt itself to a defective reality and unable because of its interpretive orientation to criticize this reality, Hegelian science can only hold itself in abeyance until "the present-day world [has found] its way out of [its] discord."



The conclusion that Hegelian science arrived prematurely is not inconsistent with Hegel's statement that no philosophy can overleap its age. This is because Hegel's pivotal affirmation – the definition of the Absolute as Spirit – may be said to synthesize a religious receptivity to transcendence with a secular commitment to the autonomy of the human individual. The essential autonomy of the human being had, in Hegel's time, already been grasped in principle. It had barely begun to shape a world.

## 5 The Science of Spirit in Abeyance

If one opts for the conclusion that the discord of the times probably means that Spirit is a fiction, then the defeat of Hegelian science means that there is no fall-back position for Hegelian philosophy; we simply abandon the idea of Spirit altogether. In that case (and given Kant's incompletely critical idealism) we seem faced with an indeterminate choice between the natural law of the ancients and the transcendence-free humanisms of Nietzsche and Heidegger, all of which agree that history is pointless, which is to say that there is no history but only time or an "eternal recurrence of the same." However, if we assume that the discord of the times betokens a failure of history, then we can retreat from the claims of Hegelian science without giving up Hegelian political or constitutional *theory*. Nietzsche's rejection, in his *Untimely Meditations*, of Hegel's ascribing purpose to history can then be understood as an overreaction to the untimeliness of Hegel's meditation.<sup>127</sup> For this writer, the philosophy of history given in the *Phenomenology of Spirit* is sufficiently impressive in its explanatory power to warrant a belief that the discord signifies a failure of history. The question then arises: what form can Hegelian philosophy take in a world unprepared for Hegelian science?

At first sight we are confronted by a dilemma that turns on the historically conditioned rift between objective and subjective reason. In the just State or in the state that is potentially just, these extremes are harmonious; objective reality is rational and the subjective mind is witness to this fact. In our time, however, subjective reason is not fully at home even in the most advanced states of the world, and it can only regard with horror what goes on in benighted states. Accordingly, we seem faced with a choice between the arrogance of "conscience" and the passivity of "the unsophisticated heart": either we choose critical action oriented toward a future harmony, in which case we substitute a private insight and inspiration for law; or we act ethically in conformity with given laws and institutions, but then we blindly acquiesce in the results of history.

I propose that we take our cue in resolving this dilemma from the way Hegel himself dealt with it. Between 1802 and 1831, Hegel wrote three critical essays responding to contemporary political events and controversies, two of which were published in his lifetime. In these essays, the primary targets of his criticism are the remnants of feudalism, respectively, in pre-1806 Germany ("The

German Constitution”), in the reformed German *Land* of Württemberg (“Proceedings of the Assembly of Estates in the Kingdom of Württemberg”), and in pre-1832 England (“The English Reform Bill”).<sup>128</sup> To understand Hegel’s method in these essays, one must recall that feudalism was destroyed in Europe by two great historical waves. The feudal political system, under which the authority of the Empire was dissipated among a plurality of virtually sovereign princes and corporations, was revolutionized by the rise of the sovereign nation-state; the feudal social structure, characterized by the inequality of civil and political rights as between the aristocracy and the many, was swept away by the French Revolution and its impact on the rest of Europe.

Now, in Hegel’s articles, the specificity of these historical stages is scrupulously respected. That is, in criticizing existing political practice, Hegel applies no standard of justice that is not already historically ascendant, nor does he prescribe any reform not necessitated by that relative, immanent, and limited standard. So, for example, in the 1802 manuscript commonly referred to as “The German Constitution” and written prior to Germany’s political transformation under French influence, Hegel criticizes the feudal constitution of the Holy Roman Empire from no higher standpoint than that of Machiavelli, Bodin, and Hobbes. The problem with Germany is simply that it is “no longer a state.”<sup>129</sup> The standard of statehood by which Hegel measures Germany is not the rational essence of the State; rather it is a minimalist standard according to which the state is simply a union of “a multitude of human beings . . . for the common defence of the entirety of its property.”<sup>130</sup> We recognize this definition as that of “civil society.” Just how abstract this standard is can be appreciated from the criteria that Hegel explicitly excludes from it. Among these are: whether the holders of authority be one or many; whether the one or many be born or elected to authority; whether or not all individuals enjoy the same civil rights; and the system of administration and representation. Indeed, the sole characteristic essential to the state as Hegel here defines it is sovereignty. Accordingly, in his concrete proposals for reform, Hegel urges no more than that individuals submit themselves to a central authority endowed with fiscal and military power to maintain internal peace and defend against external foes.<sup>131</sup>

In his published article on “The Proceedings of the Assembly of Estates in the Kingdom of Württemberg” (1817), Hegel’s critical standpoint has changed. This is because he now confronts a political context in which, owing to the impact on Germany of the French Revolution, the principle of equality and rationalism in law has been accepted in principle, though, because of the resistance of the nobility, not yet in fact. In this article, therefore, Hegel attacks the particularism of the Württemberg aristocracy from the standpoint of the achievements of the French Revolution. The specific occasion for the article was a dispute between the newly crowned king and the nobility over the former’s proposed constitutional reforms limiting the aristocracy’s historic privileges. As Hegel now frames it, the issue is not simply feudal particularism versus state sovereignty but positive versus rational law – historic privilege versus the universal rights of man and citizen. Thus he chides the nobility for clinging to the

anachronistic principle of prescriptive right and for thus giving the appearance of having “slept through the last twenty-five years...”<sup>132</sup> On the other hand, he praises the king’s proposed reforms, particularly his grant of political representation to the many and his codification of the fundamental rights of citizens, as “universal truths of constitutionalism.”<sup>133</sup>

The essay on “The English Reform Bill” (1831) is likewise written from the critical standpoint of a human rights revolution that had already taken place. There Hegel criticizes the chaos of historical political privileges in English law in the name of the universalism and rationalism recognized in the proposed reform of the franchise. In the Reform Bill itself he sees evidence of the dawn in England of an intelligence that, in continental nations, had systematized civil law and remodeled political institutions according to rational principles. “Hitherto,” he writes,

England has lacked the features which constitute the major part of these glorious and fortunate advances. Amongst these features the chief is the scientific remodelling of law, whereby...general principles have been applied to and carried through the particular specifications [of law] and their complexities...Next, a still more important feature in the transformation of law must be mentioned – the deep insight of princes in making the guiding stars of their legislative activity...such principles as the state’s well-being, the happiness of their subjects, and the general welfare, as well as and above all the sense of an absolute justice, and in doing this with a view to...giving [these principles] reality in the face of merely positive privileges, traditional private interest, and the stupidity of the masses.<sup>134</sup>

Still, it would be misleading to suggest that in these articles Hegel sides wholeheartedly with the party of reform. On the contrary, he finds grave fault with the democratic innovations envisaged by both the king’s Charter and the Reform Bill, specifically with the lack of provisions ensuring public-spirited deputies and with the atomistic basis of election and representation. Against this system he brings forward the organic model of democracy discussed above – one that, in resting on ethical, civic-minded corporations, guarantees the fitness of both electors and elected. Moreover, in the Reform Bill essay, Hegel expresses doubt that the extension of the franchise will suffice to eliminate England’s class stratification and fear lest it admit to Parliament “new men” who, hostile to the existing oligarchic order, would exploit popular grievances to institute “not reform but revolution.”<sup>135</sup> Indeed, the real message of the article concerns the danger of social and political change arising from class conflict and the preferability of reform initiated by the Crown in obedience to the necessity of its own concept.

Nevertheless, even in proposing these eccentric-sounding alternatives to contemporary democratic reforms, Hegel does not go beyond the ideas of his time. His favorite model of Crown-initiated, organic constitutional reform is the process undergone by states like Bavaria, Württemberg, and Prussia during and immediately after the Napoleonic Wars. And in advocating corporate-based democratic participation, Hegel reminds his reader that Napoleon himself gave

Italy a constitution under which representation rested on the occupational groupings of *possidenti*, *dotti*, and *mercanti*.<sup>136</sup> Thus, for every reform he proposes he is careful to point to a precedent. His only worry concerning the English radicals is that they might not observe the same constraint.

The sum and substance of these observations is that, in none of his occasional political writings is Hegel's full conception of justice directly in play. Rather, each essay is written from a partial and historically relative normative standpoint, so that the writer criticizes only in light of standards of justice already widely accepted. So understood, these essays are examples of a Hegelian critical theory suitable to a time during which Hegelian science must remain in abeyance. They also represent Hegel's own alternative to the so-called right- and left-wing offshoots of his philosophy that developed after his death. Hegel's answer to his conservative and revolutionary disciples alike is the idea of implicit, rather than absolute, Spirit, along with the critical dialectic of theory and practice that idea implies and that we saw emphasized in the *Phenomenology of Spirit*. This idea demands neither passive submission to fact nor its revolutionary transformation but rather criticism of the given in light of commonly accepted rational principles, the outcome of which criticism is organic, peaceful reform leading in turn to the formulation of more adequate principles. Thus, instead of orienting himself directly by what is common or directly by Spirit, Hegel orients himself to what is common mediately through Spirit and to Spirit mediately through what is common. In doing so, he reconciles political criticism with an ethical orientation to the present, acceptance of the given with the integrity of critical reason. Here is how Hegel, in an early manuscript, described both the dilemma and its resolution:

The condition of the man whom the time has banished to an inner world can be either merely a lasting death if he wishes to remain in this world, or, if nature urges him to life, a mere [subjective] striving to cancel the negative of the existing world in order to find and enjoy himself therein... Nature is the sole attack on or refutation of the bad life, and such a thing cannot [without corrupting it into subjective force] be the object of an intentional activity. But the limited can be attacked through its own truth, which lies within it, and can be brought into contradiction therewith...<sup>137</sup>

One is reminded of Kierkegaard's distinction between the world-historical and ethical attitudes. The world-historical man, in orienting himself directly by the future kingdom, has already lost it; the ethical man, in orienting himself indirectly by what is common, already partly inhabits it.

## Notes

1 PR, pp. 14–15. All emphases in quotes from the preface are in the text.

2 PR, p. 15.

3 The first to accuse Hegel of being an apologist for Prussian absolutism was Rudolf Haym, *Hegel und seine Zeit*, pp. 357–91. The charge is repeated by Karl Popper,

- The Open Society and its Enemies*, II, 27–80, Sydney Hook, *From Hegel to Marx*, p. 19 ff., Herbert Marcuse, *Reason and Revolution*, p. 171, and J. N. Findlay, *The Philosophy of Hegel*, p. 331.
- 4 Shlomo Avineri, *Hegel's Theory of the Modern State*, pp. 115–22; Charles Taylor, *Hegel*, p. 457.
- 5 PR, paras. 290, 295, 298–314, 319. In a note accompanying a complimentary copy of the *Philosophy of Right*, Hegel expressed to Chancellor Hardenberg the hope that the book might help him understand the relationship between the concept of the state and the Prussian state both as the latter exists and as it may yet become; see *Briefe*, II, 242.
- 6 PR, para. 280A.
- 7 This is alleged by Karl Marx, *Critique of Hegel's 'Philosophy of Right'*, *passim*.
- 8 Kojève, *Introduction to the Reading of Hegel*, pp. 69, 90, 237; cf. Tony Pinkard, *Hegel's Phenomenology*, pp. 331–9.
- 9 Leo Strauss, *On Tyranny*, p. 223.
- 10 *Hegel's Theory of the Modern State*, pp. 99, 153–4, 177.
- 11 PR, p. 5.
- 12 PR, p. 6.
- 13 PR, p. 6.
- 14 PR, p. 11.
- 15 PR, paras. 29, 258.
- 16 PR, p. 5.
- 17 GPR, p. 14 (PR, p. 14).
- 18 Plato, *Laws*, 739b–747e; Aristotle, *Nicomachean Ethics*, 1177a–1179a.
- 19 PR, para. 1.
- 20 PR, para. 4.
- 21 I reserve the capitalized word for the Will as a whole.
- 22 EL, para. 94A.
- 23 Whether Right is understood as the virtue of a state or as a valid claim of worth by an individual agent is of no moment here. The free Will's structure of mutual deference of free agencies is the form of both.
- 24 PR, para. 145.
- 25 PR, para. 145A.
- 26 M. Theunissen, “*Die verdrängte Intersubjektivität in Hegels Philosophie des Rechts*,” in D. Henrich and R.-P. Horstmann, eds., *Hegels Philosophie des Rechts: Die Theorie der Rechtsformen und ihre Logik*, pp. 317–81.
- 27 GPR, para. 157.
- 28 It has often been remarked that in the *Republic*, Socrates embarrasses Thrasymachus but does not refute him; see Allan Bloom, “Interpretive Essay,” in *The Republic of Plato*, p. 336.
- 29 PR, para. 298A.
- 30 PR, para. 184.
- 31 VR, III, 565 f.
- 32 In the progressions of the *Philosophy of Right*, it is only in civil society that we reach the idea of the “man.” In abstract right only the abstract person is salient; in morality only the moral subject of self-authored ends; in the family, only the family member. By “man” Hegel means the “concrete person” (para. 182) – that is, a free agent individuated in particular needs and wants.

- 33 PR, paras. 189–208.
- 34 PR, para. 185.
- 35 PR, para. 199.
- 36 The distinction Hegel drew in the *Jenenser Realphilosophie II* between the *Bürgerstand* and the *Geschäftsstand* is now elided by his exclusive use in the *Philosophy of Right* of the neutral term *Stand des Gewerbes* to designate the estate of artisans, merchants, and manufacturers. This change reflects two major parallel shifts: from a partly historical to a fully systematic treatment of civil society; and from an emphasis on the negative, transient aspects of civil society to one on its lasting achievements.
- 37 PR, para. 204.
- 38 PR, para. 200.
- 39 PR, para. 200.
- 40 PR, para. 211.
- 41 PR, para. 183.
- 42 In *Critique of Hegel's Philosophy of Right*, pp. 5–6, Marx mistakenly reads Hegel's State as an external state over against society.
- 43 PR, paras. 132, 215.
- 44 PR, para. 209.
- 45 PR, paras. 221–4.
- 46 PR, para. 228.
- 47 PR, paras. 231–42.
- 48 MM, 6:325–6:327.
- 49 PR, para. 230.
- 50 PR, para. 230.
- 51 PR, paras. 238–9.
- 52 PR, para. 238.
- 53 PR, para. 234A.
- 54 PR, para. 243.
- 55 PR, para. 244A.
- 56 PR, para. 245. My emphasis.
- 57 Neuhouser observes (*Foundations of Hegel's Social Theory*, p. 173) that Hegel does not consider the Keynesian solution: public works projects that create employment without overproducing consumer goods. But Hegel could respond that this strategy temporarily increases the demand for goods, the supply of which under the antagonistic conditions of capitalist production again leads to overproduction, unemployment, public works, and so on in an endless cycle.
- 58 Terry Pinkard suggests that Hegel saw international trade more generally as providing a solution to the overproduction problem that is not merely stop-gap (*Hegel's Phenomenology*, pp. 319–20). This is doubtful, as trade does not remove what Hegel sees as the underlying cause of overproduction, namely, the production process's constant reproduction of a mass of people who cannot buy the product.
- 59 PR, para. 245. Unless otherwise indicated all emphases are in the text.
- 60 Avineri, *Hegel's Theory of the Modern State*, pp. 98–99; Wood, *Hegel's Ethical Thought*, pp. 247–55; Neuhouser, *Foundations of Hegel's Social Theory* pp. 172–4; Hardimon, *Hegel's Social Philosophy*, pp. 236–50. Houlgate and Pinkard modify the myth but do not dispel it, for they have Hegel hopelessly advocating a return to the restrictive trade practices of the medieval guild; Houlgate, *Introduction to*

Hegel, pp. 204–5; Pinkard, *Hegel's Phenomenology*, pp. 320–23. Williams goes furthest in revising the common view but does not see how Hegel's corporation radically alters capitalist productive relations; see *Hegel's Ethics of Recognition*, pp. 249–61.

61 GPR, para. 249.

62 GPR, para. 254.

63 That the corporation's means of production are managed cooperatively for its common good may be concluded from: (1) PR, para. 288: "It is the business of [corporation] officials to manage the private property and interests of [the] particular spheres [of civil society] and, from that point of view, their authority rests on the confidence of their peers and fellow citizens. On the other hand, however, these circles of particular interests must be subordinated to the higher interests of the state, and hence the filling of positions of responsibility in corporations... will generally be effected by a mixture of popular election by those interested with confirmation and determination by a higher authority." (2) Hegel's statements concerning the function and nature of the corporation. The latter's chief role is to provide all those suited to a particular vocation with a sure access to the means of employing their talents (PR, para. 253). And within the corporation, "the so-called natural right" of accumulation "is restricted... only insofar as it is therein made rational" (PR, para. 254). I can conceive of only two ways whereby access to capital could be assured and the right of accumulation restricted: either by cooperative management of corporate property or by restrictions on isolated producers such as were imposed by the feudal guilds. The latter alternative is, however, explicitly rejected by Hegel as fostering a "cramping formalism" destructive to the free play of individual talents and energies; see HPW, p. 263. Franz Rosenzweig saw clearly the affinities between Hegel's corporation and utopian socialist ideas concerning "industrial parliamentarism." See *Hegel und der Staat*, II, 124.

64 GPR, para. 253. Hegel's Remark to this paragraph reads as follows: "Unless he is a member of an authorized corporation... an individual is without *social honor* (*Standesehre*), his isolation reduces his business to mere self-seeking, and his livelihood and satisfaction become insecure. Consequently, he has to try to gain *recognition* for himself by giving external proofs of success in his business, and to these proofs no limits can be set."

65 PR, para. 253: "Within the corporation the help which poverty receives loses its contingent character and the unjust humiliation associated with it. The wealthy perform their duties to their fellow associates and thus riches cease to inspire either pride or envy, pride in their owners, envy in others. In these conditions rectitude obtains its proper recognition and honor."

66 PR, p. 9.

67 PR, para. 252.

68 VR, III, 709 f.

69 VR, IV, 620 f.

70 GPR, para. 289.

71 Post-1945 Germany's co-determination scheme, which gives workers' councils a say in managerial decisions but does not replace adversarial collective bargaining, is an approximation.

72 HPW, p. 263.

73 PR, para. 207; cf. VR, I, 316; III, 635 ff.; IV, 523 ff.

74 Alexis de Tocqueville, *Democracy in America*, II, ch. 5.

75 *Contra* William Conklin, *Hegel's Laws*, p. 216.

76 PR, para. 295.

77 PR, para. 256.

78 PR, para. 258.

79 PR, 260A.

80 Giovanni Gentile, *The Theory of Mind as Pure Act*, pp. 248–64; Popper, *The Open Society and its Enemies*, II, 60–78; Steven Smith, *Hegel's Critique of Liberalism*, pp. 232–46; Timothy Luther, *Hegel's Critique of Modernity*, pp. 4–10, 226–41, 363–80. German apologists for National Socialism knew that Hegel was no friend; see Carl Schmitt, *Staat, Bewegung, Volk. Die Dreigliederung der politischen Einheit*, pp. 31–32.

81 PR, para. 260.

82 Hobbes, *Leviathan*, ed. Michael Oakshott, pp. 115–6; Rousseau, *The Social Contract*, p. 87; Kant, MM, 6:319–6:320.

83 PR, paras. 129–30.

84 GPR, para. 212.

85 GPR, para. 258.

86 PR, para. 272.

87 One cannot find in Hegel's constitution the principle of judicial independence vis-à-vis the executive. Why should this be so? Perhaps it is because the idea of judicial independence from the executive assumes an antagonism between law and politics, where politics is the clash of interests and political moralities, and law is the embodiment of a universal right abstracted from these particularisms. Where the good is identified with subjective conceptions of the good, the abstract universality of law is the only universal possible. Justice as a virtue of the state would therefore abhor executive (i.e. "political") interference with the courts. In Hegel's just State, however, the antagonism between law and politics has been overcome because politics is itself nothing but the perpetual realization of the universal good of self-determination, and law reconciles the self-determination of each with that of all. So, while there is a logical basis for the independence of the executive from the legislature, there is for Hegel no logical (hence no eternally necessary) basis for the independence of the judiciary from the executive. That independence is relative to a non-ideal politics understood as the clash of ideologies and particular interests. Still, this explains only why courts of ordinary jurisdiction would not be independent of the civil service. What about courts that review administrative action to ensure that bureaucratic orders are nothing but applications of the legislature's laws? What about the judicial review of legislation to ensure that laws are possible expressions of a universal will? Hegel does not speak of these judicial functions, and yet they can be incorporated into his constitutional scheme with only a slight revision of the tripartite division of powers into legislature, executive, and Crown. The revision is slight because the judiciary's role in performing these review functions is just to enforce the tripartite division, ensuring that none of the three powers oversteps its boundaries.

88 PR, para. 283.

89 PR, para. 273.

90 PR, para. 279.

91 K. Marx, *Critique of Hegel's 'Philosophy of Right'*, p. 25.



- 92 H. Marcuse, *Reason and Revolution*, p. 218.
- 93 For a more recent critique, see Dudley Knowles, *Hegel and the Philosophy of Right*, p. 327. For sympathetic accounts, see Bernard Yack, "The Rationality of Hegel's Concept of Monarchy," *American Political Science Review*, Vol. 74 (1980) 709–20; Peter Steinberger, *Logic and Politics: Hegel's Philosophy of Right*, pp. 211–28. Eli Diamond gives a qualified approval in "Hegel's Defence of Constitutional Monarchy and its Relevance within the Post-National State," *Animus*, Vol. 9 (2004) 105–30.
- 94 PR, para. 280A.
- 95 Avineri, *Hegel's Theory of the Modern State*, p. 187.
- 96 Iltting, "Einleitung" to Hegel, *Vorlesungen über Rechtsphilosophie*, I, 25–126; see also Iltting, "The Structure of Hegel's Philosophy of Right," in Z. A. Pelczynski, ed., *Hegel's Political Philosophy*, pp. 105–7.
- 97 PR, para. 279A.
- 98 *Politics*, 1286a.
- 99 For Aristotle, "he who bids that law rule may be deemed to bid that God and Reason alone rule ..." (*Politics*, 1287a). This, for Aristotle, is an ideal impossible to realize among men, who add "an element of the beast."
- 100 See JKS, p. 445. Although Hegel's analysis had the First French Republic in view, it could also apply to the Weimar Republic, which oscillated between ineffectual rule by a splintered *Reichstag* and government by presidential decree.
- 101 PR, para. 257.
- 102 *Politics*, 1287a; PH, p. 39.
- 103 PR, para. 279.
- 104 Peter Steinberger argues that the monarch's title must rest on a qualification everyone possesses, namely, free will and that a lottery will thus serve as well as hereditary succession; see *Logic and Politics*, p. 226. Of course, Hegel's solution is also a lottery, but a natural one. A non-natural lottery is a human device. As such, it would compromise the "majesty" of the Crown, which as a whole uniting features (of universality and natural particularity) that no finite human agency can, must be independent of human artifice.
- 105 HPW, p. 251.
- 106 GPR, para. 286.
- 107 PR, para. 283. Thom Brooks emphasizes this statement by Hegel to argue that his monarch is not the "rubber stamp" Hegel elsewhere says he is; see *Hegel's Political Philosophy*, pp. 106–13. However, a better interpretation of Hegel's monarchy would reconcile the two statements. This is done by seeing Hegel's discussion as progressing logically from a monarch at first subjectively certain of the purity of its fiat to a monarch whose certainty is confirmed through a fully constitutional state in which the representative assembly vets not only laws but also cabinet appointments. On this interpretation, the monarch's unrestricted power of appointing and dismissing ministers is a passing feature of Hegel's constitutional monarchy.
- 108 Michael Hardimon mistakes this passing feature of Hegel's state for an enduring one; see *Hegel's Social Philosophy*, p. 215.
- 109 To Hegel's arguments against the sufficiency of democracy for civic freedom may be added those based on the post-1789 experience with popularly elected heads of state who, armed with their democratic mandate, dismantle the constitutional constraints on their personal power – Napoleon III, Hitler ...

110 PR, para. 289.

111 GPR, para. 304.

112 PR, para. 302.

113 PR, paras. 305–7.

114 PR, para. 313.

115 GPR, para. 360.

116 See Hegel's letter to a Boris von Uexküll, November 28, 1821 (*Briefe*, II, 29 f.): "You are lucky, sir, to have a fatherland that occupies a conspicuous place in the realm of world history and which has undoubtedly an even higher vocation. It looks as if the other modern states have already passed the pinnacle of their course and their position has become static. Russia, on the other hand, which is perhaps already the strongest power of all, carries in its womb an immense possibility of developing its intensive nature." On America's prospects Hegel writes (PH, p. 86 f.): "America is therefore the land of the future, where, in the ages that lie before us, the burden of the world's history shall reveal itself – perhaps in a contest between North and South America. It is a land of desire for all those who are weary of the historical lumber-room of old Europe. Napoleon is reported to have said: '*Cette vieille Europe m'ennuie*.' It is for America to abandon the ground on which the history of the world has hitherto developed itself."

117 Houlgate, *Introduction to Hegel*, pp. 124–5; Pinkard, *Hegel's Naturalism*, pp. 175–6.

118 That Hegel's final State embodies a divine and not just a human Spirit explains the new relationship between faith-based theism and the State that Hegel describes in *Enz*, para. 552 and in PR, para. 270. As a kingdom of God whose authority is publicly justifiable to rational insight and expressed in objective laws, the State is no longer inferior in the order of ends to the kingdom of heaven; on the contrary, its authority is superior to a heavenly kingdom's, which, accepted on subjective faith, has no right to rule coercively. Therefore, the believer may not make the State an instrument of faith, nor substitute piety for obedience to law, nor disobey a law whenever it conflicts with his religious conscience. However, because the final State is a kingdom of God and not a human state that has displaced transcendence, it has a duty going with its inclusive wholeness to respect faith-based theisms and to promote those that nurture sentiments and habits supportive of ethical life's institutions and of the State as a whole (though Hegel goes too far in saying that the State should *require* membership in a church). Accordingly, in the final State, there will be a constitutional right to the free exercise of religion limited by the State's duty to promote the conditions of self-determination for all (so a right to exemption from laws on conscience grounds only when consistent with that duty). But there will be no wall between Church and State. The State will not be neutral as between theism and atheism, nor between all theisms, nor will it be secular as opposed to religious. It will encourage (e.g. through support for their religious schools) faiths whose reformed doctrines align with the State's grounding in individual autonomy, treating them as civil religions in Ronald Beiner's sense: "the empowerment of religion, not for the sake of religion, but for the sake of enhanced citizenship"; Beiner, *Civil Religion*, p. 2. Yet this will no longer involve (as it did for Machiavelli, Hobbes, Rousseau, and the young Hegel) bending faith-based religion to secular ends, for the end is now the transcendently divine community that a believer can accept as the fulfillment of his hope.

- 119 PR, pp. 14, 15 (my emphases). The point to underscore is that, contrary to the quietist reading, these remarks constitute a retreat from Hegel's standard view, not the standard view itself.
- 120 *Werke*, XVII, 342–4. Emphasis in text.
- 121 ETW, p. 281 ff.
- 122 Sch&Ent, p. 16; *Werke*, I, 457.
- 123 K. Marx, *Economic and Philosophic Manuscripts*, p. 184.
- 124 Obituary writers include, besides Haym and Popper, E. Fackenheim, *The Religious Dimension in Hegel's Thought*, pp. 12, 224 and C. Taylor, *Hegel*, p. 538.
- 125 Fackenheim, *The Religious Dimension*, p. 12: "[T]he Hegelian synthesis, if ever a genuine possibility, has broken down beyond all possible recovery"; Taylor, *Hegel*, pp. 539–46. See also Beiser, *Hegel*, pp. 312–3. Carl Schmitt came to the same conclusion as Fackenheim with respect to Nazism and Hegel, for he wrote that, with the appointment of Hitler as Reich Chancellor in 1933, Hegel died; *Staat, Bewegung, Volk. Die Dreigliederung der politischen Einheit*, pp. 31–32. But then what is the philosophical meaning of Hitler's suicide in an underground bunker with the *Reich* in rubble?
- 126 Emil Fackenheim wrote that "were he alive today, Hegel would not be a Hegelian." (*The Religious Dimension in Hegel's Thought*, p. 12). That is only partly true. He would not be Hegel the scientist, but he would doubtless be Hegel the philosopher.
- 127 Friedrich Nietzsche, *Untimely Meditations*, pp. 104–7.
- 128 HPW, pp. 143–242, 246–330. These essays are not mentioned by M. J. Inwood, who states that Hegel "has reservations of a general kind about any prescription or proposal whatsoever for the improvement of society." *Hegel*, p. 501.
- 129 HPW, p. 143.
- 130 HPW, p. 153.
- 131 HPW, p. 239 ff.
- 132 HPW, p. 282.
- 133 HPW, p. 254.
- 134 HPW, p. 300.
- 135 HPW, p. 330.
- 136 HPW, p. 314.
- 137 Sch&Ent, pp. 16–18; *Werke*, I, 457–9.

## Authority, Constitutionalism, Justice

“It is only in virtue of [the] identity between inherent right and positedness that positive law has obligatory force.”

GPR, para. 212

“The philosophy of right remains neither with abstraction nor with the historicist viewpoint, if the latter is not adequate to the Idea. It knows that the realm of right can arise only through a progressive development, and no stage of this process can be overleaped.”

VR, I, 232

### 1 Introduction

In the *Philosophy of Right*, Hegel equates constitutional law with the division of powers ensuring that the monarch’s personal will is nothing but the universal will determined. Apart from a terse remark on legal validity (quoted in the first epigraph above) and some remarks on due process, he says nothing about the constraints on state power of a constitutional charter of rights, though the American Bill of Rights and the French Declaration of the Rights of Man and of the Citizen were before him.<sup>1</sup> These constraints screen out positive laws inconsistent with principles of right all free agents could endorse, whereas the division of powers ensures that laws consistent with such threshold principles are reasonable determinations of the common good.

In this chapter I try to supply the missing piece. Specifically, I present a Hegelian theory of constitutional rights suitable to a time during which Hegelian science, if possible at all, must hold itself in abeyance. Then, in the next chapter, I extend this theory to account for recent developments in international institutions that might otherwise appear to prove Hegel wrong about the finality of sovereign states. This will continue the narrative concerning the

legal and institutional conditions marking the ripeness of the time for Hegel's political science, while illustrating what Hegelian political theory can do in their absence.

A Hegelian theory of constitutional limits on valid law must resolve the ambiguity in Hegel's writings concerning the relation between authoritative law and just law. On the one hand, he states that "positive law has obligatory force in virtue of its rightness," suggesting the extreme natural law thesis: *lex injusta non est lex*. On the other hand, much of Roman law, Hegel believes, was unjust in the extreme, and yet he does not deny it the designation "law"; nor does he deny that Roman laws permitting creditors to kill defaulting debtors and treating children as their father's property had "legal authority."<sup>2</sup> Indeed, he implies the opposite, for he states that "legal authority" is the guiding principle of an autonomous "science of positive law," suggesting that the concept of legal authority is itself autonomous vis-à-vis the concept of Right, which proposition is just the signature thesis of legal positivism.<sup>3</sup> Hegel does not collapse positive jurisprudence into the philosophy of law; rather, he concedes it an independent existence, and its specific difference from legal philosophy, he says, is that it takes for its object "authoritative law, all the laws that have validity in a state, and that have validity by virtue of being posited...whether [their] content is rational and intrinsically just or...extremely irrational, unjust...and given by authority of external force."<sup>4</sup> The object of legal philosophy, by contrast, is law that conforms to the concept of Right. The puzzle for a Hegelian theory of legal validity is this: how can the standpoints of positive jurisprudence and the philosophy of law co-exist? How can it be true at once that positive law has obligatory force only in virtue of its congruity with Right and that there can be legal authority independent of the authority of Right attaching to just and unjust laws alike?

Let us then take up Hegel's understanding of rational constitutional law where he left it in 1821. He left it as a law pertaining to the division of state powers in accordance with the rational division of the Idea of freedom into its logical elements. A monarch at first subjectively certain that his arbitrary fiat is nothing but the particularity belonging to the free will's Notion confirms that certainty by parceling his legislative and executive powers out to a merit-based and tenured civil service accountable to a representative assembly composed of deputies elected by non-government organizations whose internal life accords with the Ethical Idea. At that juncture, the possibility of conflict between the Crown-in-council and corporate special interests remained; and Hegel saw this residual opposition mediated by an upper house composed of landed gentlemen enjoying leisure for public affairs and entitled to their seats by birth. Failing that, the state manifested itself as an implicit whole only in relation to foreign states and as an actual Whole only in war.

I disputed whether that was a solution. A particular group exclusive of the groups it is supposed to unite is not the middle-term adequate to Spirit's unity. It is a third thing standing alongside the opposites it synthesizes, like the child that

stands alongside the parents whose marital unity it embodies. I then pointed to the modern political party uniting diverse social interests under a large political morality as a possible mediator between government administration and the representative assembly, but noted how ideological divisions among parties precluded that solution in a civil society committed to free thought, hence open to a variety of competing political moralities.

So that is where we are. In what follows I argue that the constitutional law developed by Western courts in interpreting modern charters of rights is the reconciler Hegel was seeking. In this law (where basic liberty rights are limited by egalitarian and communitarian goals subject to necessity and proportionality constraints), the ideological cleavages between political parties, each of which gives voice to one phase of freedom's development (libertarian, egalitarian, or communitarian), are cancelled in a rational unity of constitutional phases securing complete freedom – one within which each party's distinctive voice is preserved. With this law's development, the disagreements among political parties can cease to be conflicts over fundamentals; they can instead become reasonable differences of judgment over how an agreed-upon comprehensive conception of freedom is best realized in law. At that point the political party as such (now better designated as the political body or substance, the accidental variants of which are political parties) can bind government administration and representative assembly into a Whole wherein the State's unity is explicit. The argument proceeds by way of a Hegelian account of the necessary and sufficient conditions for valid political authority. Such an account is not explicit in Hegel's writings and so must be constructed in a Hegelian spirit (so to speak) from several of his texts.

The account of political authority offered here does not pretend to be "science" in Hegel's sense of the word. In an era unripe for the science of Spirit, Hegelian philosophy must make assumptions incompatible with absolute knowledge. It must be content to be Hegelian theory, or in John Rawls's terms, to be "political" rather than "metaphysical." This means that it must resign itself to persuading a particular audience rather than the universe of intelligent minds – an audience that shares its assumptions. The audience to which the argument is addressed is the liberal mind understood as one that accepts assumptions sufficiently strong to distinguish liberals from non-liberals but sufficiently weak to accommodate all divisions within liberalism.

The assumptions I make are two. First, I assume the Enlightenment maxim, *sapere aude*, and so take as granted that no political authority is valid that cannot be validated to insight. Accordingly, no attempt is made to persuade the religious believer, for whom authority rests on an inscrutable revelation, by an immanent critique of his belief system, as Hegel boldly tries to do in the *Phenomenology*. The argument is addressed only to those who accept the Enlightenment principle that valid authority is authority that can be discursively justified to questioners.

Second, I assume the principle of freedom of thought that follows from the Enlightenment exhortation to insight. This assumption lightens our

justificatory burden in one respect but makes it very onerous in another. On the one hand, the commitment to free thought rules out of court the view that political unity can be rightly manufactured by indoctrinating unformed minds into a system of thought by which the rulers are persuaded and by outlawing competing systems of thought. The demand that authority be justifiable to insight is a demand that it be justifiable to the free mind of those who bear the burden of authority; otherwise justification by insight would not distinguish rational from occult authority, whose mysteries the rulers also claim to fathom. On the other hand, the commitment to free thought imposes an obligation on the theorist of political authority not only to justify authority but to adopt a particular method of justification – one that we might call considerate justification. Rather than justify authority by a fundamental end baldly asserted at the outset and to which the basic ends of rival theories are autocratically subsumed, considerate justification defers to the independence of rival theories. That is, it seeks to demonstrate to philosophical sects sharing a commitment to freedom that the logic of their own conception of freedom requires them to press their claims only as constituents of a full conception, hence limited by other constituents. By this method, the fundamental justifying idea is a destination arrived at through an immanent critique of rival justifying ideas rather than, in Hegel's phrase, something "shot from a pistol."<sup>5</sup> So, while this chapter's argument leaves the opponent of liberal pluralism to his beliefs, it tries hard to immerse itself in the standpoints of liberal political moralities in order to lead them *by their own motion* to the constitutional Whole in which each is preserved as a phase.

## 2 The Ideal Form of Mutual Recognition

A Hegelian account of political authority must solve the problem of political authority. The problem can be set out as follows. To claim political authority is to claim a power to put people who (unlike children) are capable of self-rule under an obligation either to obey the claimant's commands or to submit to his force. Let me roll that disjunctive obligation into one obligation to submit to the commander's will. Since a power to put others under an obligation is a good definition of a right, I'll say that a claim of political authority is a claim of right to coerce obedience to one's commands. Such a claim might be made by someone – an official – occupying a place in a chain of command, each placeholder claiming a right ultimately derived from that of the supreme commander, who is commanded by no one. The supreme commander is called the sovereign.

Sovereignty is a relational concept in that a claim of authority to rule people able to rule themselves must gain a validating acceptance from the ruled. Ruler and ruled are *parties* to sovereign authority. This is what distinguishes a commander from other speakers in the imperative mood. Robbers and extortionists make demands, but they do not command. Relying on unilateral force rather than relational authority, they require *of* (de-mand) but not *with* (com-mand). In that their success in obtaining compliance is from moment to moment, they cannot be said to rule those from whom they demand things, if by rule we

understand an order that is stable over time. Robbers avail themselves of a power provided by nature that is also available to others against them. So they temporarily overpower, but they do not rule. Nor can their victims be said to obey them if by obedience we understand compliance from a conviction of duty. They comply, but they do not obey, or they refuse to comply and are at liberty to resist the consequence.

By contrast, someone who commands claims a right to be obeyed and a right (derived from the first) to use force to realize the right. By commanding, he purports to put those whom he commands under an obligation to submit to his will even if their own reason tells them the command is foolish. This, however, raises a time-honored question. What transforms someone's subjective claim of right to coerce submission to his will into an objectively valid claim such that the subject has a valid obligation to submit to what is truly the command of a sovereign? What are the necessary and sufficient conditions of valid political authority?

### 2.1 *Ideal Recognition in the Phenomenology*

The point of departure for a Hegelian account of these conditions is his idea of mutual recognition, a discussion of which appears in the section of the *Phenomenology of Spirit* dealing with the irruption of self-consciousness from the biosphere.<sup>6</sup> Hegel presents an ideal form of recognition as well as a series of stages through which the form is imperfectly but progressively manifested. The ideal form consists in a certain kind of relationship between two free agents, both of whom claim end-status (final worth) by virtue of a capacity to renounce every aim given by nature, self-preservation included, and to act on ends (honor, dignity) posed solely by intellect. The relation is one of mutual subordination wherein the claim of each to end-status is objectively confirmed through the free recognition of the other. Instead of seeking to prove its claim by subjugating the other and making the other a means to its end-status, each makes itself a means for the other (recognizes the other's end-status), yet is preserved and confirmed as an end in this deference by virtue of the other's reciprocally deferring to it. Because the validation of a claim of end-status can come only from an independent other equal in status to the claimant, each must respect the other's independence for the sake of its own objectively realized worth. The ideal form of recognition, accordingly, is a relation of mutual subordination between two worth-claiming selves, each of whom recognizes the other's end-status for the sake of realizing its own.<sup>7</sup>

Right and duty are products of this relationship. A claim of end-status is a claim to others' respect for one's end-status, but a claim is just a claim. To be confirmable as an objective right to respect, the claim must be capable of being spontaneously recognized without loss to its independence by the agent to whom the claim is addressed. Accordingly, only those claims of end-status capable of being recognized without self-effacement by other agents are valid claims, and only valid claims of right are rights others have a duty to respect.



Duty is correlative to right, and both issue from an ideal transaction evincing the mutual recognition of worth-claiming agents.

The ideal's realization does not, however, occur all at once. It proceeds by stages through which the free agent progressively learns what the conditions of its realized end-status are. Each stage embodies a partial understanding of those conditions but educates the agent to a fuller one requiring a sloughing off of the now inadequate stage and a transition to the next. At first, validation is sought through the agent's solitary negation of the independence of things by means of an acquisition and consumption still driven by biological appetite.<sup>8</sup> The inadequacy of this unilateral and appetitive mode of confirmation leads to the awareness that validation can come only from the recognition of one's freedom by another agent; and so we proceed by well-known steps through a fight to the death by rival claimants to absolute worth, to slavery and domination, to the mutual recognition of equals in a Roman world of property relations grasped in the Stoic thought of natural law.<sup>9</sup>

What is important in this for our purposes is the following. First, each stage of the development manifests the form of ideal recognition in a defective but partial way. Each partakes of, or approximates, that form to the degree allowed by the limited understanding of worth-conditions informing the stage. In doing so, each stage realizes part of the conditions (negation of the independence of things, risk of life for honor, recognition by a living other, recognition by an equal) necessary and sufficient for a fully validated claim of worth. At the same time, each stage teaches, through its failure to realize worth, what was missing from the understanding that shaped it and what a better understanding must include. Because, moreover, the ideal form of recognition is validated as the matrix of valid worth claims only through this learning process, the agent's education to that form is essential to the form's validity as the form of right and duty. As a consequence, once a worth-claim emerges from the biosphere, there is no either/or dichotomy between *de facto* right (such as exists in unilateral possession or slavery) lacking true normativity, on the one hand, and authentic right as a reciprocal relation between free equals, on the other. Rather, there is a logical continuum, each stage of which evinces a mixture of unilateralism and reciprocity that is purer than its predecessor, culminating in a clear solution in which unilateralism is dissolved.

## 2.2 Authority's Career

In the progress depicted in the *Phenomenology*, the end driving the movement is the isolated ego's claim of end-status, and the goal of the development is the perfect validation of that claim through submission to a public authority that reciprocally makes the ego's dignity the end of its laws. However, we should be able to tell the same story from the side of the public authority. We should, that is, be able to trace a teleology of authority if we take as the thing to be validated, not a right-claim of an isolated individual, but an authority-claim of a putative ruler. An authority-claim, after all, has some features in common with

a right-claim. It too is a normative claim of end-status directed against others, for the would-be ruler claims a power to put others under an obligation to put his ends above theirs where his have issued in a command. Here, however, the other is not “all” but the subset of “all” over which the ruler can rule effectively, and the way for the other to validate the claim is by acknowledging a duty positively to advance (hence serve), not just to avoid interfering with, the claimant’s will. So, the putative ruler asserts that the multitude over which he claims authority ought to acknowledge his end-status by obeying commands ordered to ends he sets even if this means forgoing satisfaction of their own ends. The question would then be: what are the stages by which a would-be authority’s claim to end-status is progressively validated? Each stage would satisfy a necessary condition of valid authority and so would constitute a partial and relative authority – one limited by a permission to resist for the sole purpose of moving to a higher stage; but only the stages together would constitute the necessary and sufficient conditions for an authority that is valid absolutely. Let us accompany the would-be ruler as he traverses these steps. Before we set out, however, here is an itinerary of his journey.

We can speak of sovereign authority as having a career and of its career as a ladder. Authority’s career begins with someone’s claiming a right to rule, climbs several rungs at which the claim is partly and progressively validated through its recognition by a subject whose freedom (in some sense) is reciprocally recognized by the ruler, and ends with its perfect validation by a fully independent subject equal to the ruler. I’ll call the rungs of authority *de facto* authority, *de jure* authority, legitimate authority, constitutional authority, and just authority. If that ladder highlights important distinctions, then the customary division of authorities into *de facto* and legitimate is too simple.<sup>10</sup>

As I use the term, *de facto* authority is not simply empirical authority in the social scientist’s non-normative sense. It is authority given some normative validation by the subjects’ voluntarily accepting the ruler’s claim of right to rule them. It is not enough to produce this grade of authority that subjects habitually adhere to the ruler’s directives. As H. L. A. Hart argued against John Austin, even victims of extortionists might do that.<sup>11</sup> They must adhere *opinio juris*, as lawyers say. That is, they must accept the grounds for the ruler’s authority claim and voluntarily obey him for the reason that he (as they believe) satisfies those grounds. This is so because, for a claim of authority to be valid, it must be spontaneously confirmed by the *other* over whom authority is claimed; otherwise it remains a subjective claim asserted against the other – one lacking objective validation.

While submission to merely *de facto* authority is voluntary, however, it is not autonomous; for subjects of merely *de facto* authority are not autonomous agents who deliberatively set ends for themselves and submit for self-interested reasons. They submit for self-suppressive reasons – for example, because they accept the ruler’s claim that he is descended from the first patriarch and they are his children, or because they are awed by a warrior who seems godlike to

them because he demonstrates an indifference to life without honor while they remain sunk in life for its own sake. They therefore submit to an authority that is unlimited by a duty to respect their autonomous (end-generating) agency, none having yet developed. So a ruler with merely *de facto* authority rules by *ad hoc* decrees, and he may, without injustice to them, treat his subjects as instruments of his ends, using them in any way he chooses. Merely *de facto* authority is despotic authority.

*De jure* authority is a species of *de facto* authority where the ruler's deference to the subject's bare volition at the previous stage becomes deference to its deliberative – hence independent – volition. A ruler defers to his subjects' deliberative volition just in case he rules by general laws by which the subject can guide *himself*. Here the ruler submits his authority claim to validation by his subjects' thoughtful self-application of the ruler's laws to their own conduct. Because this is a better validation than one produced by the volition of subjects with no mind of their own, *de jure* authority is stronger than merely *de facto* authority.

Legitimate authority is that species of *de jure* authority in which the germ of ruler deference to subject autonomy present in *de jure* authority develops into a relation of mutual covenant and service. Here subjects acknowledge an obligation to submit to a ruler on condition that the ruler acknowledge a duty to rule solely for the self-interested purpose for which they submit, whatever that purpose is. Because, however, the purpose of merely legitimate rule is drawn from inclination (from what subjects value most), the subject surrenders its independence for the sake of some material purpose, with the result that there is no law to constrain what the sovereign may do to its subjects in furtherance of the purpose it is authorized to execute. Thus merely legitimate authority falls back into despotism.

Constitutional authority is that species of legitimate authority in which the idea of equality between ruler and ruled incipient at the previous stage is fulfilled in the idea of equal subjection of ruler and ruled to a conception of public reason, by which I mean a reason for rule that all free subjects can accept. Here the ruled acknowledge a duty to submit to a ruler on condition that the ruler acknowledge a duty to serve a specific purpose for their submission, namely, to protect the subjects' freedom or independence. Because the subject gains back as a right the vulnerable independence it gave up, there is now a right of independence in the subject to constrain the ruler. At this stage, accordingly, a conception of public reason rather than a natural person is sovereign, and so we arrive for the first time at substantive constraints on valid law. A natural person's command that unjustifiably violates the subject's independence is invalid as law, for it cannot be a command of the public sovereign.

Finally, just authority is that species of constitutional authority where the rule of public reason is perfected under a comprehensive conception of public reason comprising the partial conceptions that together make up the necessary and sufficient conditions of the subjects' independence. Because a partial

conception of independence is a private reason for those lacking independence under the conception's rule, we can say that just rule is rule under the conception of public reason alone adequate to the concept of a public reason. As we'll see, that conception is the one Hegel calls Spirit.

In sum, then, each stage of authority subsequent to the first is a species of its generic antecedent distinguished by its fulfilling a potential incipient at the previous stage and generating a new potential for the next to fulfill. Each stage before the last produces a relative authority limited by a permission to resist the ruler for the sole purpose of moving to a higher stage. Only just authority is absolute authority entailing an unqualified obligation to submit. Together, the stages comprise what can be called the juristic morality (or natural law) of sovereign authority.

Hegel himself never gave an account of authority's career – at least not explicitly. Nevertheless, we can construct one from his scattered remarks about the state of nature, about despotism and bondage, about rule through general and knowable laws, and about the rule of public reason.

### 3 Hegel's State of Nature

The concept of a state of nature plays a minor role in Hegel's political philosophy. This is so because Hegel is not a social contract thinker who, like Locke and Kant, thinks that human beings have rights outside of political society and that political authority is justified only as protecting or actualizing these already minted or (for Kant) inchoate rights.<sup>12</sup> For Hegel, individual rights are embedded within a political community that recognizes the independent dignity of the monadic ego for the sake of its own confirmation as the ego's end; and so the political community sufficient for dignity is the natural *telos* of the human individual, not an artifact instituted by morally self-sufficient (and so naturally dissociated) egos.

Nevertheless, Hegel does speak occasionally about a state of nature. In the *Philosophy of History*, he writes that the state of nature is a condition of "untamed natural impulses, of inhuman deeds and feelings."<sup>13</sup> In the *Philosophy of Right*, he calls it a "state of affairs where mere force prevails" and where the "natural will" has free rein.<sup>14</sup> The natural will is discussed in the Introduction to the *Philosophy of Right*. It is the will that is free only in form because the content of its choices is derived from impulses and inclinations the will finds within itself.<sup>15</sup> The natural condition is thus one in which "the mental is plunged in the natural ... [a condition] of savagery and unfreedom, while freedom itself is to be found only in the reflection of mind into itself, in mind's distinction from nature."<sup>16</sup> In his Heidelberg lectures, Hegel reportedly said: "rather is it the case that a state that could be described as a state of nature would be one wherein there were no such things as right and wrong because spirit had not yet attained to the thought of its freedom (and it is only with this thought that right and wrong begin)."<sup>17</sup>

From this we can glean the following. In a state of nature, there is no possibility of right and wrong. But this is not (as Hobbes thought) because each person has a natural right to do with others what it pleases; nor is it (as Locke and Kant thought) because, though each person's right is limited by another's, each is judge in his own cause as to whether an action is right or wrong. Rather, no rights or wrongs exist in a state of nature because there are no *persons* in that state whom one could wrong. No one lays claims to a dignified status that others must respect or could disrespect. This is because no human animal has yet attained a consciousness of his or her free agency; everyone is sunk in biological existence. Accordingly, each simply aims at the satisfaction of appetites he finds within himself, exercises force to obtain satisfaction when he believes this would be advantageous, and resists or suffers the force of others, exactly as other animals do.

The state of nature is thus pre-moral. It stands to norms as prehistory stands to history. It is not necessarily a state of ongoing violence, for it may be that individuals regard themselves as too equal to fight safely. But it is a constant state of incipient violence, because aggression is always an eligible means of achieving one's ends; there is no norm against it. Though savage, therefore, the state of nature can be considered from one point of view a state of innocence, because there is no consciousness of a norm in whose light human beings could be judged or feel themselves inadequate. From another viewpoint, however, the natural state may be considered a state of evil, because human beings in that state are not the free beings they are potentially and ought to become.<sup>18</sup> "Freedom," Hegel writes, "as the ideal of that which is original and natural, does not exist as original and natural."<sup>19</sup>

For Hegel, accordingly, the state of nature is not a thought experiment as opposed to an actual anthropological condition. It is not a modern Western society of right-claiming persons abstracted from a sovereign authority and assumed, despite its historical specificity, to be the natural condition of humanity. Rather, it is a prehistoric condition in which human relations are driven by biological need and in which an understanding of right and wrong has not yet emerged – a kind of childhood of the human race.<sup>20</sup> Because there are no norms, there are no stable ethical relationships. There are families but their bond is the natural feeling that also exists in other animals and that is inherently fleeting and changeable.<sup>21</sup>

Though an anthropological condition, however, Hegel's state of nature is unlike Rousseau's idealized picture thereof, in that it is not a condition of primitive autonomy in which human beings have simple needs they can satisfy on their own and which it is their misfortune to have lost. Natural impulses may be moderate or immoderate depending on individual temperament. Since there is no opposed will to curb them, they will seek the maximum satisfaction circumstances permit.<sup>22</sup> They will also find outlet in barbarous practices – cannibalism, for example – because the natural will has no sense of a cardinal distinction between human beings and other animals. Accordingly, Hegel rejects

the idea that appetites become immoderate only through the vices of pride and vanity acquired in civil society. Indeed, he even denies that the desires spawned by *amour propre* are unambiguously lamentable. For Hegel, as we saw, the sophisticated mental wants engendered by society and depreciated by Rousseau are wants generated by freedom, signifying humanity's liberation from physical necessity.<sup>23</sup>

As Hegel's conception of the natural state differs from his predecessors', so too does his view of the state of nature's characteristic deficiency. What is uniquely defective about the natural state is not that each is insecure in his life, liberty, and possessions (this may also be true of some political regimes); nor is it that rights are unreal because each is judge of right and wrong and there is no public guarantee of enforcement. The defect is rather that the natural state is devoid of the consciousness of free will that is an inherent attribute of the natural will – of the will sunk in nature – and that makes normativity possible. The consciousness of free choice (self-consciousness) first brings a normative firmament into being; for it is the consciousness of an end – selfhood – standing outside the laws and ends of the biosphere, an end that is universal to *Homo sapiens* and that can therefore issue “oughts” to the natural will. Since, moreover, human beings are destined by their capacity for free choice to live in a norm-governed condition, the only duty they have in a state of nature is to leave it.<sup>24</sup>

What does it mean for Hegel to leave the state of nature? It does not mean to surrender one's natural liberty to judge wrong and to enforce one's proprietary and contractual claims to a sovereign judicature and executive; for that view reads into nature an implicitly juridical relation between free agents already juxtaposed to nature. Rather, human beings leave the state of nature when a claim of authority to rule erupts from the sphere of factual power relations and when the “hero” who makes this claim succeeds in attracting others' recognition of it.<sup>25</sup> The would-be ruler is a hero for no other reason than that he introduces into an erstwhile moral desert a normative claim – a claim to authority or rightful rule. That the normative claim might be a rationalization of an urge to power is of no moment, for the important thing is that the hero's private purposes accord with what human ethical development requires; to reduce the hero's normative revolution to his psychological motivations is to take the standpoint of the envious valet.<sup>26</sup>

The irruption of a claim of authority from the state of nature is no miracle. For the natural will already implicitly involves, by virtue of its freedom from causal determination, a potential for renouncing biological ends and for acting purely for the sake of demonstrating one's indifference to them. This potential in turn reveals an end not given by nature – namely, the ego that can renounce biological ends and make radical independence its goal. And the existence of an end transcendent of nature makes rule over nature possible. The hero is someone who realizes the natural will's potential for disentangling itself from biological drives, who thus becomes conscious of his own end-status, and who

claims a right that others acknowledge him as the end of their biological lives. Moreover, argues Hegel, the authority-claimant has a “right of heroes” to prove in battle his detachment from nature and thereby to win the recognition of those who, preferring a servile but determinate life to the hollow honor accorded an abstraction, surrender to him. Here force has a right because it serves a claim of authority for a non-natural end rather than the satisfaction of natural appetite; and so it effects an exodus from the moral wasteland of the state of nature.<sup>27</sup>

Still, this is not a Kantian right of heroes to coerce others into a rightful condition. Rather, the hero’s battles are sufficiently justified by their bringing into being a relationship of authority and voluntary obedience; for there can be no condition of right unless there is first a condition of normativity.<sup>28</sup> Thus, the hero who inaugurates a normative world is justified in his battles even if the authority he exercises is unbounded.

Let us examine more closely the basis of the hero’s claim of right to rule others. Historically, the criterion is indeterminate. In ancient Greece, says Hegel, the first rulers claimed authority from “superiority in riches, possessions, martial accoutrements, personal bravery, pre-eminence in insight and wisdom, and lastly, in descent and ancestry.”<sup>29</sup> Logically, however, the basis of the first ruler’s title to rule is specific: it is his uncompromising commitment to the freedom from natural ends as manifested in his willingness to fight to the death to win others’ recognition of his end-status – that is to say, in his readiness to die for the non-natural end of honor.<sup>30</sup> His willingness to stake all for the sake of others’ recognition of his distinction is what underlies the hero’s claim to rule, and those who yield to his will do so because they prefer life in subjection to a ruler to risking death for pre-eminence.

In yielding, however, the defeated do not simply give way for the time being to overpowering force. Rather, they acknowledge the ruler’s claim to rule on the basis of his having achieved a liberation from nature that they have not accomplished, yet sense is their own inner potential, something they ought to accomplish. We can say that the subject accepts the hero’s rule out of awe for his valor. He, not they, has shown the radical freedom of which humanity is capable. But then theirs is a voluntary submission to an ideal that partakes of the pure form of recognition and that therefore gives a partial validation to the ruler’s claim to rule. An authority, albeit a rudimentary one, has come into being.

## 4 Pre-Constitutional Authority

### 4.1 *De Facto Authority*

The normative condition inaugurated by the hero’s attracting others to his rule may be called a condition of *de facto* authority. It is a condition of authority because, as we’ve seen, it realizes a claim of authority through the voluntary acceptance by the ruled of the hero’s spiritual title to rule. It is a condition

of merely *de facto* authority because the ruler's claim of authority is validated by an ongoing factual acceptance of his right to rule and nothing more. It is not validated by autonomous acceptance, because the hero's subjects are not autonomous agents acting from self-authored ends. They are natural wills following their appetites. True, their submission is voluntary, for (whether they know it or not) they have freedom of choice, and they chose to submit out of admiration for the hero; indeed, this is why their acceptance partakes minimally of the ideal form of recognition conferring a particle of authority on the ruler. Nevertheless, their acceptance is not that of beings aware of their capacity to set ends for themselves, and so it is the acceptance, not of autonomous subjects, but of subjects sunk in natural life.

At this point, therefore, the relation between ruler and ruled is one between despot and serf. Authority that is *de facto* and nothing more is despotic because such an authority defers to the subject's volition and nothing more. It owes no duty to its subjects beyond the duty to attract them rather than overpower them. The despot is not necessarily a tyrant who rules solely in his private self-interest; he may rule also for the benefit of his servants. The distinguishing mark of this stage of authority, however, is that, while the ruled recognize the freedom and end-status of the ruler, the ruler recognizes no end-status in the ruled, and so there is no normative stature in the ruled capable of limiting the ruler's rule. Consequently, the ruler cannot wrong his subjects by subordinating them to his personal ends – by being a tyrant; that is what makes him a despot.

Though no human being is inherently fit for servitude, still, there is a particle of authority in the voluntary relation between the despot and his serfs. It consists in the serf's duty not to resist the despot until he develops an awareness of his own capacity to set ends for himself and can thus disobey on the principled ground of his unfitness for serfdom.<sup>31</sup> He may not disobey merely to satisfy a contrary impulse. Moreover, this temporary duty to obey holds even if the despot is a tyrant. This is so because the despot's particle of authority issues from a voluntary recognition of a claim of authority under a non-natural end, not from the ruler's virtue or his service to a common good. That is to say, there is normativity here just because the despot-servant relation minimally partakes of the form of mutual recognition between free agents.<sup>32</sup> One human being claims a right to rule others based on his unique liberation from nature and attracts their admiration by displaying valor. In that he attracts rather than overpowers, he defers to their free volition. The addressees of the authority-claim voluntarily accept it because they acknowledge that an autonomous self is entitled to rule beings governed by biological drives. Acceptance of the claim by volitional beings of that sort gives the claim a meager kind of validation, and so the despot has a weak authority irrespective of whether he rules solely in his own interest or for the benefit of the ruled. His orders therefore also have a particle of authority irrespective of their content.

A despot may rule over servile subjects through *ad hoc* decrees expressing his (benevolent or selfish) whims and may settle their disputes through *ad hoc*



judgments ungoverned by rules. He owes no duty to his subjects to rule through general laws, for the latter presuppose a subject with enough sense of its independence of mind to interpret the ruler's generalities and thoughtfully apply them to its own conduct; and yet the servile subject has no such sense of its independence. Not having manifested a capacity for authoring ends, subjects are not wronged by being ruled according to ends entirely external to them. But that is what rule by *ad hoc* orders is. Such orders call for mindless compliance in the service of another's ends (even if they are another's opinion of one's own good), for there is no space for appropriating the command through interpretation, hence none for thoughtfully participating in their implementation. Hegel tells us that rule through general and knowable laws is a "right of self-consciousness," for it is a procedural condition of the subject's imposing the law on itself.<sup>33</sup> But a subject capable of acknowledging the rule of someone who does not acknowledge its own end-setting capacity has no self-consciousness that could bear the right.

The condition of *de facto* authority is the worst manifestation of the form of mutual recognition; hence it generates the weakest possible form of authority. It is indeed a manifestation because, not only does the subject voluntarily accept the ruler's claim to rule, but the ruler *wins* acceptance through heroism rather than simply subjugating by force. Thus deference to agency is mutual. Nevertheless, it is the worst manifestation because a claim of authority can be independently validated by the addressee only if the addressee is an agent with a mind of its own – one to whose independent mind the claimant can submit for confirmation. A claim of authority cannot be satisfactorily validated by one whose mind is effaced in the ruler's, for such a being cannot deliver an independent validation.

Further, whatever particle of authority the despot has is dependent on the serf's continuing perception of him as a hero superior in ethical achievement to himself as well as on the serf's own immersion in natural appetites. Yet neither is stable. Once the hero warrior settles down to rule, he cannot but revert to a life of pleasure because, (a) there being no end-status in his subjects to constrain his liberty, there is no law to do so; and (b) there being nothing to his freedom but the negative detachment from life in battle, there is no available content for his non-military choices but the satisfaction of appetite.<sup>34</sup> So the despot as warrior (Augustus) becomes the despot as libertine (Caligula). This means that the despot cannot sustain the heroism that attracted the subject's awe, which alone validated his claim to rule. Because, moreover, the serf accepts the despot's rule only from a fear of risking its life for freedom, the ruler's validation is entirely contingent on the serf's continuing aversion to risk, and so too, therefore, is the serf's duty to obey. But a duty to obey that is contingent on the duty-bearer's remaining in a thing-like condition in which it ought not to remain is hardly a duty at all. It is a duty qualified by the subjective condition that the subject choose to remain in a state inconsistent with its human potential. Correlatively, resistance is permitted on the weak condition that it assert the subject's free

personality. Once resistance of that type is shown, authority collapses into merely factual power.

#### 4.2 De Jure Authority

*De facto* authority contains the seeds of its supersession in a kind of authority more adequate to the idea of a valid authority. In *de facto* authority we have the idea that a necessary condition of valid authority is acceptance by a subject who could have chosen not to accept it. An authority claim is valid only insofar as it is validated by the addressee through voluntary acceptance of the claim. This means that authority requires, not only the subject's deference to the authority, but also the authority-claimant's deference to the volition of those he needs to validate his claim. The despot satisfied this condition. His deference consisted in his having abjured unilateral subjugation through the sheer physical overpowering of a weaker rival and in his having instead won voluntary acceptance by displaying valor.

Still, recognition was one-sided. The subject recognized the end-generating (purposive) agency of the despot – his capacity to act from ends he sets for himself – but the despot recognized no purposive agency in the subject that could independently validate his authority-claim and set bounds to his liberty to do as he pleased. In despotic authority, accordingly, we saw only the germ of the ruler's deference to the subject's agency. We saw deference to the subject's volition but not to its autonomy, for the good reason that the subject had not yet displayed a capacity for acting from self-authored ends. Hence the validation the despot received for his authority-claim was not a validation from a genuine other – from an agent with aims of its own – and this imperfect validation was mirrored in the subject's weak duty to obey. The subject was permitted to withdraw obedience as soon as he perceived a softness in the despot or sensed that he could act from purposes he deliberately sets.

Nevertheless, the potential for a better validation of the ruler's authority was incubated within despotic authority itself. By voluntarily acknowledging the title to rule of someone whose heroism he esteemed, the subject manifested a potential for acting from ends not given by nature, for his admiration for the ruler's autonomy showed that autonomy was also nascent in him. He admired the hero as his own ego-ideal – as the actualization of what was still only implicit in him. Were the potential not in him, he could not have admired an exemplar to the point of acknowledging its right to rule him. Moreover, the subject's service for the despot actualized his potential for self-determination, for he no longer worked to satisfy his immediate appetites but rather to serve an ego-ideal – a purpose independently set by the mind.<sup>35</sup> Within despotic authority, accordingly, there develops a purposive agency in the subject to which the ruler can defer; and this potential for a more satisfying validation of authority through the *autonomous* acceptance of the ruled is actualized in *de jure* rule.

*De jure* authority perfects the potential for autonomous acceptance germinally contained in the servant's voluntary acceptance of *de facto* authority.

*De jure* authority is a species of *de facto* authority distinguished by the ruler's ruling through standing, general, published, prospective, and intelligible laws rather than through *ad hoc* orders. Here Hegel's model is Justinian, whom he praises for distilling and codifying the basic principles of Roman law.<sup>36</sup> In ruling through general and published directives, the ruler defers to his subjects' purposive agency, for he now leaves room for their thoughtful self-execution of his commands. Directives published in general but clear terms and having only prospective force allow the subject to interpret the command and to judge whether his planned conduct is permitted or forbidden by the rule. As a result, the subject acts not simply in obedience to the ruler's external ends but to the ruler's ends as interpreted by the subject and self-applied to his own conduct. In this way, the subject actively participates in the ruler's executive power, and the ruler obtains a more satisfying validation of his claim of authority. That claim is now validated by a thoughtful obedience rather than a mindless one.

Correlative to a more satisfactory validation of authority, moreover, is a stronger duty to obey. The serf's duty was conditional on a subjective condition, namely, his undeveloped capacity for autonomy, and so it could hardly be called a duty at all. As soon as he developed the capacity and was ready on that account to rise up, his duty ended. By contrast, the subject ruled by laws has a qualified *binding* duty to obey because his duty is conditional, not on what *he* chooses, but on the ruler's satisfying an objective condition for a verifiable authority claim. The ruler must rule through standing, general, and knowable laws. Provided he does so, the subject must submit unless resistance is for the purpose of instituting a further objective condition of valid authority. Accordingly, normativity has thickened on both sides of the relationship. Not only does the subject have a qualified duty to obey a ruler who observes the procedural constraints of legality; the ruler can now wrong his subjects by ruling outside of general and published laws or by applying force to them in the absence of a proven breach of law.<sup>37</sup>

Whether the ruler can be called to account for such wrongs is, however, another matter. No doubt the norm of legality is enforceable by subordinate magistrates through the interpretation of statutes and oversight of executive actions in accordance with a presumption that the sovereign means to rule through prospective and determinate laws by which the subject can regulate its own conduct so as to conform to the sovereign's will. However, the norm of legality is not enforceable against the sovereign's clear will to deviate from it, because it was only for the sovereign's sake – for its more perfect sovereignty – that the principle was established. As there is no independent end who may demand that the principle be adhered to for its sake, there is no one to answer to for violating it. As a consequence, honoring legality may be ascribed, as it was by Justinian, to the “extraordinary liberality of our Imperial will,” and what comes from generosity can go with impunity.<sup>38</sup> Accordingly, the norm of legality can have no teeth against a sovereign who is *de jure* and nothing more.

Here again the content of the ruler's laws is irrelevant to the ruler's *de jure* authority. The prince who rules through laws serving his selfish interests has an authority stronger than the benevolent despot just because his rule is accepted by autonomous subjects rather than by serfs. His *de jure* authority is simply a product of the grade of mutual recognition achieved in ruling through laws that subjects can interpret and apply to their own conduct; it has nothing to do with whether he rules tyrannically in his own interest or virtuously in his subjects' interest. A philosopher king who ruled for the common good through *ad hoc* decrees would not have an iota of right to be obeyed by free persons, whereas a tyrant who ruled in his own interest through standing, general, and knowable laws applied by subjects to their own conduct would have a partial authority (qualified by a right of resistance for the sole purpose of instituting a further condition of authority), and his subjects would have a duty correlative to that grade of authority.

If the ruler possessed of *de facto* authority and nothing more is a despot, the ruler possessed of *de jure* authority and nothing more is an absolute monarch.<sup>39</sup> This is so because, unlike the despot's, his relationship with his subjects evinces a kind of *arche*, for he rules not by momentary caprice but in accordance with standing laws. Yet he is necessarily an autocrat, for rule that is *de jure* and nothing more evinces only a weak reciprocity between ruler and ruled and not even a germ of equality between them. The *de jure* ruler rules through laws without being obliged to serve the interests of *any* of the ruled; the ruled are subject to rule by law but cannot complain if the ruler legislates in his private self-interest. Under merely *de jure* authority, accordingly, the relationship between ruler and ruled is still a hierarchical one between the singular and the many. The many are *unilaterally* subordinated to the rule of the singular. So, insofar as authority is *de jure* and nothing more, it is the authority of a monarch who, though he can wrong his subjects by ruling by extemporary decree or by restraining them extra-legally, cannot wrong them by anything he legislates. The rule of the late Roman Emperors exemplified an authority that is *de jure* and nothing more.

Under *de jure* authority, there is a duty to submit to general and knowable laws, but that duty is qualified by a permission to resist the ruler for the sole purpose of instituting a further condition of valid authority. What is this condition?

In ruling through general laws, the ruler defers to the autonomous agency of those who defer to his authority, and so there is a germ of reciprocity in the relation between ruler and ruled. But there is no developed reciprocity because, while the ruled deferred to the ruler's legislative say-so, the ruler owed no duty to defer to the subject's independent reason for valuing legality or for submitting to the ruler's legislative will. For the subject who himself acts from non-given ends, that reason is no longer awe of another's heroic liberation from nature; it is rather the ends he or she autonomously projects and whose secure satisfaction requires coercive authority under laws. The ruler acknowledged a duty to rule by general laws, but he did not acknowledge a duty to account to the ruled for a

breach of legality nor did he acknowledge a duty to legislate exclusively for the sake of the interest the ruled had in acknowledging his authority. For the ruler who is *de jure* and nothing more, any such duty is one of virtue, the sanction of which is bad conscience, ill fame, damnation, etc. It is not a juridical duty on whose performance the subject's duty to submit is conditional. So, while the subject owes a duty relative to the ruler's *de jure* authority to serve the ruler's interest in ruling, the ruler owes no reciprocal duty to serve the interest the subject has in accepting his rule. Provided he does so under general laws, the ruler may enrich himself at his subjects' expense – the pleasure of the prince is the source of law. Hence submission is unilateral, authority hierarchical.

The want of full reciprocity under *de jure* authority constitutes an imperfection in the validation the prince receives for his authority claim. This is so because objective validation can come only from a subject who is independent of the authority claimant, and yet where submission is unilateral, the subject gives up its independence – its freedom to rule itself – to the ruler's realized authority but is guaranteed nothing in return – nothing in satisfaction of its own self-interest. The ruled thus become unilaterally a means for the ruler. But authorization of rule by someone who treats himself solely as a means to the ruler's realized authority is not the independent authorization the ruler requires. It is still the authorization of a servile being incapable of delivering an objective validation.

Furthermore, authentic validation must be uncoerced validation. Yet, where obedience to threat-backed law is the only mode of validating the ruler's authority claim, that claim is not well validated because obedience is coerced. No one would think that a parliament whose members feared reprisal from the ruler if they did not unanimously approve his rule could give a meaningful vote of confidence in the ruler. But that is the position of subjects under the *de jure* rule of an absolute monarch. Thoughtful or not, their compliance with the monarch's laws cannot constitute an objective validation of his authority claim, because the ruler threatens them with dire consequences if they do not comply. And because the authority claim receives no uncoerced validation, the subject has no unqualified duty to obey a ruler who is *de jure* and nothing more. He may resist for the sake of a better authority.

These defects in *de jure* authority show what a better authority is. They show that a further desideratum (besides voluntary acceptance and rule through law) of valid authority is, first, that the subject retain in its submission to authority the independence *from* authority that qualifies it to give a validating recognition. The subject must accept the ruler's claim of authority to rule without losing the independence it had prior to acceptance. Second, recognition must be the product of an interaction between ruler and ruled that is prior to the everyday interaction consisting of the promulgation of, and compliance with, laws and that is free of the coercion involved in that interaction.

The first condition, however, seems to require a contradiction. Submitting to authority just means giving up the liberty to act on one's independent judgment

concerning matters on which authority has spoken. How then can one retain one's independence in submitting to authority? How can authority acknowledge its subjects' independence from authority and remain authoritative.

The contradiction dissolves once we notice a distinction. There is a difference between an authority's permitting its subjects to act on their independent judgment about matters on which it has ruled and its deferring to its subjects' independent reason for submitting unreservedly to its judgment. The former is incompatible with authority, but the latter is not. Accordingly, for an authority to be validated by the subject's autonomous submission, it must acknowledge a reciprocal duty to submit to its subject's autonomous agency by making the subject's own reason for submission the sole end of its rule. Submission must be mutual as between the parties to authority. In that way, each becomes a means for the other – the subject a means to the ruler's realized authority, the ruler a means for the subject's purpose in submitting to authority; but the independence of both is preserved by virtue of the reciprocity of submission. That ruler and ruled be at once means and end for the other is the condition for the subject's submission to the ruler being able to deliver an independent validation to the ruler's authority claim.

This solution shows how the second condition can also be satisfied. The requirement that submission be mutual entails that valid authority is ultimately the product of a covenant logically prior to the quotidian interactions of ruler and ruled. This need not be an empirical covenant, the legal force of which would presuppose the sovereignty the covenant first establishes. It is an implicit covenant under which alone authority can be conceived as valid. By this covenant, subjects freely authorize the ruler to make laws for them in return for the ruler's pledge to rule solely for the sake of the subjects' interest in submitting to his rule. For validation to count, the subject's submission to the ruler's say-so must be met by the ruler's submission to the reason for the subject's submission, whatever that reason is. This is so because, as we have seen, only another end can validate a claim of end-status. Authorization of rule by someone who treats himself solely as a means to the ruler's ends is not the independent authorization the ruler requires.

However, the subjects of absolute monarchy no longer treat themselves solely as objects for another. They are autonomous agents who act from ends they set for themselves and whose potential for doing so was perfected through obedience to general laws they could interpret and apply to their own conduct. Absolute monarchy has thus schooled the kind of subjects the ruler requires for an authentic validation of his authority claim. Beings who treat themselves as ends will authorize a ruler only if his rule is exclusively for the sake of their common interest in submitting to another's rule. And the ruler will accept this condition because it is the condition of his authority claim's being validated by an independent end and hence of the subject's strong duty to obey. Matthew the Apostle encapsulates the transition to the new order thus: "Ye know that the princes of the Gentiles exercise dominion over them, and they that are great

exercise authority upon them. But it shall not be so among you: but whosoever will be great among you, let him be your minister; and whosoever will be chief among you, let him be your servant."<sup>40</sup> Princes as servants, subjects as masters – this marks the transition from merely *de jure* to legitimate authority.

#### 4.3 Legitimate Authority

Legitimate authority is that species of *de jure* authority distinguished by a fully developed reciprocity in the relation between ruler and ruled. Legitimate authority perfects the germ of reciprocity incipient in *de jure* authority in that it is the product of an uncoerced covenant between ruler and ruled whereby the subject freely acknowledges the ruler's authority on condition that the ruler acknowledge a duty to serve his subjects' common purpose for accepting his rule. In this fully reciprocal relationship, there is also an equality between ruler and ruled, though only in germ. Both are equally ends for the other, but the ruler is so far under no duty to share his legislative power with the subject. To be sure, he is now accountable to them as a body, for his subjects have a power of oversight and deposition to enforce the covenant; and they may now demand legality (as in the Petition of Right) for the sake of their own freedom from the capricious will of the ruler. Still, they have no right to self-rule, for this is what they surrendered in authorizing a sovereign for the sake of whatever other interest. Thus authority remains hierarchical. The ruler commands; the subjects obey or else.

Where authority is legitimate and nothing more, the common interest the ruler is duty-bound to serve is nonspecific. The subject is the author of particular ends, some of which many others share because they share a way of life or because the achievement of some ends – security of life, limb, and possessions, for example – is generally a precondition for everyone's achieving idiosyncratic ends. Where authority is merely legitimate, these shared material values are the only available source of a common interest for the sake of whose promotion the subjects submit to a ruler. Thus St. Augustine defines a republic as "an assemblage of reasonable beings bound together by common agreement as to the objects of their love."<sup>41</sup> They may love wealth, security, national honor, racial superiority, or whatever. Authority is legitimate if, and only if, the subjects freely submit to a ruler on condition that the ruler acknowledge a duty to promote the values the subjects commonly prize and for the sake of which they submit.

Also indeterminate is the composition of the group to whom the ruler is accountable. The subjects who share an interest requiring submission to a common authority for its satisfaction and who are conceived to have covenanted with the ruler may be all those subject to the ruler or a part of all. They may define themselves in any way they choose. If they are a part, rule is legitimate as between the parties to the covenant but only *de jure* as between the ruler and those excluded from the covenant. Legitimate rule is thus compatible with the tyrannical (self-interested) rule by the parties to the covenant over those

excluded – for example, by those of noble birth over commoners, property owners over the propertyless, or by one ethnic or religious group over another. Accordingly, while normativity has thickened relative to merely *de jure* authority, it is still thin relative to just authority. A legitimate ruler may promote the interest of the part that authorizes him, and those subject to his rule do not necessarily have a duty to obey of the same strength. The dominated part may resist for the purpose of making their particular interests count for the ruler, whereas the domineering group may resist on the more onerous condition that their resistance aim at a revolution of a kind to be discussed shortly.

Under legitimate rule, the duty to obey is stronger relative to that under merely *de jure* rule. This is so because we have here for the first time an authority claim that is autonomously validated by an independent end-for-itself. The ruler is duty-bound to serve the shared interests of at least some of his subjects as the condition of their being able to deliver an independent validation. Because recognition is finally symmetrical, validation is authentic; and so the covenanting subject has an obligation to obey on condition that the ruler keep his pledge to rule through laws having nothing in view but the benefit of those with whom he covenanted.

In that sense, a strong political obligation is conditional on the ruler's laws' having a certain content. But observe that the content need not be that of justice. It suffices for legitimacy and for the obligation relative thereto that the content of laws be the shared values for the sake of which a self-defined group submits to a common ruler. And those values may be not only indifferent from the standpoint of justice but also antithetical to justice. They may be an interest in feudal privilege, in secure possession against the destitute, in despoliation of the rich by the poor, in religious orthodoxy against reformers, or in racial purity against the different. No doubt those excluded from the covenant have the weak obligation to obey that is relative to *de jure* authority, one qualified by a right of resistance to compel a *de jure* ruler to take account of their welfare. But the members of the in-group have an obligation to obey their legitimate ruler qualified only by a right of revolution for the sake of constitutional rule under a public reason all agents could accept.<sup>42</sup>

In a world where legitimate authority is the model of authority (roughly Europe from the thirteenth to the seventeenth centuries), there are no civil or political "rights of man" held against the sovereign. The sovereign now owes a duty to some or all of its subjects, to whom it is accountable for the failure to perform it. But the sovereign's duty is only to serve the interests of those – barons or *bourgeoisie* – who populate the implicit covenant and not to alienate or divide the sovereignty upon which those interests depend. Provided the ruler adheres to this duty, he cannot wrong his subjects. If peace and security are the reasons for submission, the sovereign may, at its discretion, suppress free speech, association, and assembly for the sake of security; he may, for that purpose, torture and detain or kill extra-legally without doing injustice. As Hobbes argues, norms of legality and due process remain interpretive presumptions for



subordinate magistrates that the sovereign may set aside on its unilateral judgment that security requires it.

If legitimate authority were fully valid authority, legal positivists would be right and natural lawyers would be wrong. There could then be laws carrying (for some) an unqualified jurisprudential obligation to obey even though the laws were contrary to justice as serving the exclusive interest of a part. To be sure, there would remain a distinct moral standpoint from which the sovereign's repressive actions could be judged cruel, sadistic, or whatever; but as this virtue morality lies outside the juristic morality of authority, its writ would extend to admonition but not to rebellion. So, if legitimate authority were fully valid authority, we could all endorse Bentham's motto of a good citizen: "To obey punctually; to criticize freely."<sup>43</sup>

However, legitimate authority is not the culmination of authority's career. While an implicit covenant between ruler and ruled is a necessary backdrop of valid authority, it is not sufficient, for it is also necessary that the covenant be of a particular type – that the interest for the sake of which a multitude submits to a ruler be a specific interest. This is so because the independent validation for an authority-claim produced by all but one type of covenant is inherently unstable. Covenants between ruler and ruled that are unimpeachable as to their voluntariness and reciprocal benefit can reproduce *within the covenanting group itself* a condition of despotism over serfs in which the ruler fails to obtain recognition from independent ends. This means that legitimate authority can be criticized from within the juristic morality of authority itself, without invoking the (so far) external standard of justice.

The gap between legitimate and valid authority is exemplified in the social contract described by Hobbes.<sup>44</sup> Under that covenant, a multitude of individuals surrender their pre-civic right to self-determination to the sovereign representative of a united body (a "commonwealth") on condition that the sovereign serve their fundamental interests in security of life, limb, and possessions by maintaining civil peace. As Hobbes argues, the sovereign's rule is legitimate because conditionally authorized by its subjects in return for the sovereign's securing the conditions of felicity and "commodious living."<sup>45</sup> But because individuals traded their independence and self-rule for security, the sovereign is a virtually untrammled ruler who, as long as it keeps the peace and does not alienate its sovereignty, cannot wrong its subjects; for when they alienated their right of self-determination to it, they authorized all its actions.<sup>46</sup> No doubt the subject may physically resist the sovereign's extra-legal force (even legal force!) for the sake of the self-preservation he covenanted for. But he cannot legally enjoin the sovereign from crushing his puny resistance with all of Leviathan's might, and so he is totally exposed to the sovereign's caprice. Accordingly, this is a covenant through which the ruler *loses* the independent subject it needs to validate its authority.

Hegel provides his own analysis of an interaction between ruler and ruled that, while producing legitimate authority, fails to produce valid authority.

It is the interaction between monarch and courtier we saw depicted in the *Phenomenology*.<sup>47</sup> The courtier recognizes the monarch's claim of authority through obsequious flattery and loyal service. In return, the monarch serves the courtier's interest in wealth and patronage. The monarch's authority is legitimate because conditional on his serving the venality of those who realize his authority; and yet it is not valid because, in abasing himself before the monarch for the sake of wealth, the courtier creates an unlimited ruler who once again cannot wrong his subjects. Since the monarch finds no validation in servile flattery, the duty to obey him ceases as soon as the courtier is ready to rebel against his humiliation, just as in the case of the serf.

If covenants establishing legitimate authority can reproduce a relation between despot and serfs, they can also produce a situation of no authority. This is so because, if a group of people constitute an authority for the sake of their particular interests and may withdraw their allegiance whenever they judge that the ruler has failed to protect those interests, then the subject has not unreservedly surrendered its private judgment about common matters to the ruler, and so the ruler is not a political authority. He is unilaterally a servant of those with whom he covenanted. Even if, as Joseph Raz maintains, subjects constitute an authority for their common interest in adhering better to the norms of morality that apply to their conduct independently of authority, they do not constitute an authority if they reserve a liberty to disregard the law whenever they judge that their reason for submission does not apply.<sup>48</sup>

We can generalize from these examples in the following way. To the extent that the constituent covenant between ruler and ruled involves a trading of the subject's independence for the satisfaction of some interest other than independence, it either reinstates a despot-serf relation incapable of generating an objectively valid authority or else produces a situation of no authority. This defect in legitimate authority taken alone brings to sight a further desideratum of valid authority – one that might be called (after its discoverer) Rousseau's requirement.

The covenant must have a specific content. In order for the subject to retain its independence in submitting to the ruler and for the ruler to remain an authority in being accountable to the judgment of the ruled, the ruler must rule, not in whatever material or moral interest the subject has in submission, but in the interest of the subject's independence itself. In that case, the subject recovers in secure form the independence it possessed insecurely outside authority, and so it preserves in submission to rule its qualification to give an objective validation to the ruler's claim of authority. Correlatively, the ruler maintains its authority in becoming a means for the subject, for the ruler's authority is subservient to an ideal rather than an empirical will – to the will that wills independence from the arbitrary will of others. A ruler who rules for the sake of an ideal interest in independence rules under a public reason for rule that all independent subjects could accept as their own. To this public reason (and not to the empirically shared reason of his supporters), the authoritative ruler is answerable in the

sense that any directive of his that is incompatible with the reason is denuded of authority – *ultra vires*. It is the mere demand of a natural person whose authority no independent subject can accept or (therefore) have an unqualified obligation to obey. With this step we have entered the world of constitutional authority.<sup>49</sup>

## 5 Constitutional Authority

### 5.1 Constitutionalism: Concept and Conceptions

Constitutionalism in general may be defined as that species of legitimate rule under which subjects are governed, not by natural persons factually accountable to them for failing to serve their empirically shared interests, but by office-holding representatives of a public reason all human beings could will as authoritative. By a public reason I mean a reason for submitting to rule that is universally and necessarily shared by beings possessed of certain natural capacities. Under ancient constitutionalism, the public reason for rule was *arête* – the perfection of humanity’s political nature in active citizenship. Under medieval constitutionalism, it was natural *arête* as preparation for the supernatural virtues made possible by divine grace and that citizens would display in a kingdom to come. Under modern constitutionalism, the public reason for rule is a reason necessarily shared by beings possessed of a capacity for free choice and a potential for living out self-authored plans. That reason is their interest in securing the conditions for exercising the capacity and developing the potential – in short for independence.

Political authority acknowledged for the sake of independence is constrained by the ruler’s duty to respect the subject’s independence, without which submission to authority would not yield a perfect validation of authority. Thus, the duty is intrinsic to valid authority. The correlate of that duty is a constitutional right to independence in the subject – all subjects – a right specified in the basic freedoms of speech, conscience, and association as well as in the freedom from the ruler’s arbitrary force. This means that a constraint on rule for the sake of the subject’s independence is an inherent right of *political* subjects – one that reflects a prior duty inherent in offices exercising political authority. It is not, if our account is correct, a right of humanity abstracted from subjection to particular sovereigns – of humanity in a transnational sphere.<sup>50</sup> So, for example, a constitutional guarantee of free speech or a guarantee against arbitrary detention or killing reflects an “inherent” right not because it actualizes a moral right of humanity always to be treated as an end and not merely as a means, but because it perfects internal sovereignties, which are thus the real home and primary guarantors of human rights. Because the subject’s continuing independence of the ruler qualifies it to validate a claim of authority through acceptance thereof, constitutional rights are complementary to valid political authority and so constitutive of unqualified political obligation. To enforce them against the ruler is thus to fulfill, not to contradict internal sovereignty.

Because it is only to the authority of the public reason of independence that a subject can submit without losing the independence needed to validate authority, no natural person can have an absolutely valid authority over others. Only incumbents of offices executing the legal determinations of public reason and answerable to public reason through courts and democratic legislatures may do so. In this way, constitutional rule under public reason realizes the equality between ruler and ruled implicit in the reciprocity of merely legitimate authority. Everyone is equally ruler because the public reason that is sovereign is everyone's reasonable will; and everyone is equally subject to the authority of public reason. Here, instead of the prince's will ruling through law (*lex*, *Gesetz*), Law (*ius*, *Recht*) rules through the prince's will.

It follows that the only authority relation conformable to the ideal form of mutual recognition is the relation between public reason and the individual person. Thus only the political authority of public reason is valid without qualification, and the subject has an unqualified duty to obey only those laws of a constitutional regime that have been confirmed by courts and democratic assemblies as instantiating public reason. This is what Hegel means by saying that "[i]t is only in virtue of [the] identity between inherent right and positedness that positive law has obligatory force."<sup>51</sup> He means that just laws alone have *unqualified* binding force. There is no further reason internal to the nature of authority to which one could appeal as justification for disobeying a command certified as consistent with the *Rechtsstaat*.

Observe, however, that just laws are the only laws binding without qualification for reasons internal to the juridical logic of recognition, not because unjust laws are immoral and so nonbinding for the moral conscience. They are indeed binding to a degree relative to the grade of authority under which they are issued, though the moral conscience is free to criticize them. Because conscience is bound to accept authority in whatever degree it objectively (that is, measured by a standard of ideal recognition independent of morality) exists, Hegel's identification of absolutely valid laws with just laws avoids the anarchical implications legal positivists ascribe to natural law theory generally.

Observe, further, that authority's career intersects with Right only at its zenith and only after it has accumulated other conditions – namely, the procedural aspects of legality as well as legitimation by an implicit covenant with the ruled enforced through institutions of accountability. *De jure* and even legitimate authority (along with their correlative obligations) can exist without Right – that is, even though the authority serves the interest of a part; and a natural person who rules virtuously through *ad hoc* orders rules justly but with the weakest of authorities: as soon as their autonomous agency dawns on his subjects, they may resist his authority for the purpose of compelling him to give them laws. If a natural person rules virtuously through laws but without being institutionally responsible to the ruled, he rules justly but not legitimately, and so the subject does no wrong in resisting his authority for the purpose of gaining institutions ensuring accountability. For Hegel, accordingly, that authority

is alone valid without qualification which satisfies all the architectural necessities of authority, of which justice is only the capstone.

It follows that legal positivists are right to distinguish law and legal obligation from justice. But they are wrong to assert an absolute separation, for the legal obligation to obey a ruler's commands under despotic, merely *de jure*, and merely legitimate regimes derives from the degree to which these regimes participate in the ideal form of mutual recognition; and so the obligation derives from the degree to which each regime approximates the best embodiment of that form in rule through general laws approved by courts and democratic legislatures as determinations of public reason. Hence the obligation to obey rulers under imperfect regimes is qualified by a permission to resist for the purpose of compelling reforms allowing for a fuller participation in the ideal form. Only constitutional regimes under the authority of public reason can claim an absolute authority to which resistance is impermissible. This resolves the ambiguity noted earlier in Hegel's statements about legal validity. While there can be unjust laws and legal obligations to obey them, unjust laws are laws only in a qualified sense, and the obligation to obey them is relative to the particle of authority they possess; disobedience is permissible for the sake of a stronger authority. The extreme natural law thesis (*lex injusta non est lex*) is thus also both right and wrong. It is right to assert a connection between law and justice but wrong to deny authority outright to unjust laws and regimes.

Because juridical authority of some grade exists in all the regimes we discussed, there can be an autonomous science of positive law geared to juridical authority in a generic sense common to despotic, merely *de jure*, merely legitimate, and constitutional regimes. The meta-doctrinal scholars in this field debate what the generic sense of juridical authority is. They search, not for the normative model or ideal notion of juridical authority in which all types participate, but for the analytical essence of juridical authority, that which distinguishes it from neighboring concepts such as the expert's authority and moral obligation. Is authoritative law the command of a person acknowledged by habitual obedience as sovereign? Is it a directive identified as law by a meta-rule of recognition accepted by officials? Or is it a directive authorized by a higher norm of the legal system and ultimately by a presupposed basic norm imparting unity to the system? Hegel's philosophy of law claims no superior wisdom regarding such matters, and so it leaves the issue for scholars of analytical jurisprudence to resolve. But while Hegel's legal philosophy leaves room for an autonomous science of positive law geared to authority in the abstract, it still claims the title of master legal discipline; for its object is the absolutely authoritative regime by virtue of their participation in which other regimes have the authority they have.

Authority's development from despotism to constitutionalism is no more than its maturation from childhood to early adulthood. It is still far from the ripeness of old age. This is so because, while valid authority is constitutional rule under the public reason of securing the subject's independence, there are

several conceptions of independence, each capable of informing constitutional order on its own. This plurality of public reasons for authority divides liberal constitutional thought into political sects – libertarian, egalitarian, and communitarian – with counterparts in political parties in constitutional regimes throughout the world.

The sects, however, are branches of one tree. All constrain rule by a public reason identified with, or inclusive of, the subject's independence, differing only in their understandings of what the right to independence means and what aspect of the subject – its free will, moral conscience, or specific character – the quality of independence must pertain to. For classical liberalism (which I'll call libertarianism), the constitutional right to independence is the subject's permission to act pursuant to its freely chosen ends with no limit beyond the equal permission of others; for egalitarian liberalism, it is the right of equal citizens to self-rule and to shape their private lives in accordance with a self-formed conception of the good; for communitarian liberalism, it is the room that solidarities formed around national traditions are obliged to leave for individual characters freely to internalize (or not) their ways of life. This variety of conceptions of independence poses a problem for the possibility of constitutionalism as defined above. The problem is that there exists a plurality of liberal conceptions of public reason such that the exclusive rule of one transforms public reason's rule into sectarian domination, thereby subverting constitutionalism and the unity of the state. Just as Christianity's fragmentation in the sixteenth century subverted medieval constitutionalism, so does political liberalism's fragmentation threaten the modern variant.

### *5.2 Can Authority's Internal Morality Resolve the Dispute Among Liberalisms?*

This is the problem with which we left Hegel's own exposition of civil society's development toward unity and justice in the previous chapter. The political party seemed a good candidate for unifying the Crown-in-council with an Assembly composed of corporate deputies, and yet the ideological cleavages between parties in a civil society committed to free thought precluded this solution. The question we must now ask is: can the juristic morality of political authority determine a rational solution to the controversy about public reason's content such that the differences between political parties can cease to be differences over fundamentals and become differences of judgment over how an agreed-upon conception of public reason is best realized in law? Has that juristic morality exhausted itself in an indeterminate prescription for liberal constitutionalism (leaving the content of rights to political contestation), or does it extend further to determine a specific content to liberal constitutionalism – one on which all liberal sects can agree? If it extends that far, then the political party under *any* banner within the broadly liberal camp can, if all parties accept the solution, mediate between society's deputies and the Crown-in-council, thus actualizing the State's internal unity.

I argue that authority's juristic morality extends that far. We have come to the point in authority's career where we understand rule for the sake of the subject's independence as a requirement of an unqualifiedly valid political authority and obligation. It stands to reason, then, that the juristic morality of authority would impose on rulers a duty to secure the necessary and sufficient conditions of independence. Rulers who secure only part of what is required for the subject's independence would attract a qualified obligation limited by a permission to resist for the sole purpose of securing a further requirement. Furthermore, authority's internal morality has told us that authority is unqualifiedly valid only as the authority of a public reason all free subjects can accept. If, however, the rule of a particular conception of public reason singling out one ingredient of independence dissolves constitutional rule under public reason into despotic rule under a private reason, then that conception cannot be the one under which authority is unqualifiedly valid. Only the *conception* of public reason adequate to the *concept* of a public reason will fill the bill, and so the juristic morality of authority extends to that conception. We may conclude, then, that the absolutely authoritative regime (obligation to which is unconditional) is constitutional rule under the adequate conception of public reason encompassing the necessary and sufficient conditions of the subject's independence. Just authority is constitutional authority under that conception.

The adequate conception, however, cannot be one alongside others. Because it must encompass *all* the conditions of the subject's independence, the adequate conception of public reason must incorporate all partial conceptions together with the constitutional paradigms they respectively order as particular examples of its own overarching form of ideal recognition. This is so because, though failing to identify sufficient conditions for reconciling authority and independence, each failed conception of public reason identifies a necessary condition; and that condition can be honored only if the conception of public reason singling it out maintains its integrity and partial autonomy within the unified set of all conditions – so no longer as sovereign but as constituent and subordinate, demoted rather than annulled. Were the condition (e.g. the authority's duty to respect its subjects' reasonable liberty) simply blended into a richer brew (its duty of concern for their moral self-determination), its specific necessity would not have been credited. This gives us a glimpse into the nature of the public reason that is truly sovereign. It must be the totality of constituent conceptions of public reason necessary and sufficient for generating constraints on rule that reconcile authority with independence. So, sovereign public reason will organize a constitution encompassing several subsidiary constitutions, each subordinate to the Whole and equal with each other. For Hegel, of course, sovereign public reason is Spirit.

This, then, is the path along which authority's career can continue. It develops toward the comprehensive conception of public reason encompassing particular conceptions of independence as constituent elements of a full

conception. In the subsections that follow, I set out the conceptions of public reason of classical, egalitarian, and communitarian liberalism as well as the interpretation of the basic freedoms that flows from each conception. I also try to connect these conceptions as parts of a full conception through Hegel's three-step logical method (followed in the *Phenomenology*) of analysis, immanent negation, and synthesis. To keep this chapter within reasonable proportions, I'll focus exclusively on the freedom of civil (not political) speech, and for illustration, I'll consider how each constitutional paradigm would treat a law regulating pornography and hate speech.

### 5.3 *The Constitution of Liberty*

In the classical liberalism given exemplary expression by Kant, the solitary person is thought to be morally self-sufficient in the sense that it owes its right to respect to nothing beyond its innate free will. Put negatively, the human individual depends on no political body or deity for its dignity; rather, its dignity rests sufficiently on the end-status involved in its capacity freely to posit ends. That is why the intellectual covenant forming a civil union is, for Kant, only a relative necessity – a necessity conditioned on the unavoidability of living in proximity with others. Were the earth a plane rather than a sphere (such that one could move away from others without at the same time drawing nearer to them), there would be no rational necessity for political association and no moral imperative to enter one. Accordingly, classical liberalism sees the human being as “naturally” solitary in the sense that no natural teleology moves him into political society. The individual need not *become* in a civic body the dignified end he potentially is, for he is already fully a dignified end by virtue of his free will. His state of nature is thus not a civic state but a state of mutual indifference and dissociation.

The dignity in free will entails that every person is at liberty to act on ends it freely chooses (no one may hinder him from doing so) to the maximum extent consistent with the equal liberty of others. In Kant's famous formula, that action is right which can co-exist with the external freedom of all under a universal law.<sup>52</sup> Observe that this so-called axiom of right evinces the form of an ideal recognition. Each person is bound to suffer another's liberty only to an extent consistent with its remaining an independent end capable of validating the other's right-claim to liberty, hence only on condition that he can reciprocally bind others to suffer his liberty to an equal extent. Accordingly, the axiom of right exhibits the form of ideal recognition in the specific shape of mutual respect between self-centred persons. Everyone may act self-interestedly within bounds consistent with the equal liberty and vulnerability of all.

For classical liberalism, coercive authority is justified only as specifying and enforcing this pre-civil axiom of right. In doing so, coercive authority remedies the defect in the axiom's natural authority stemming from the unilateralism of specification and judgment in the pre-civil condition. Because of this flaw, no one can wrong another, and so the person's innate right to be free of another's



constraint is merely inchoate. For the sake of the right's realization, human beings must unite under a common authority that, by virtue of its impartial judgment and the assurance it gives of omnilateral obligation, brings a condition of rights into existence. That is classical liberalism's public reason for rule and obligation. It is to perfect both the natural authority of the axiom of right and the person's innate right to respect for its liberty. Of course, the rational necessity for globe-bound agents to unite under a common authority contradicts the claim that the human agent is morally self-sufficient (and that anarchy is thus its natural condition), but of this contradiction classical liberalism is unaware.

In that public authority under the constitution of liberty is justified only as actualizing the axiom of right, those commands of the ruler are alone authoritative that specify and enforce the law enjoining mutual respect between persons or that create infrastructural supports (roads, communication, sanitation, etc.) for a rightful condition. Those that curtail liberty more than is necessary for equal liberty or that impose non-reciprocal obligations are devoid of authority. Here we see another instance of the ideal form of recognition – this time between ruler and ruled. By the terms of the libertarian covenant, the subject submits to rule under a public reason identified with guaranteeing mutual respect between free and equal persons; and the ruler reciprocally submits the validity of his commands to a test of acceptability by such persons. In that he has a duty (going with his authority) to conform to that criterion, the ruler wrongs his subjects by failing to do so. However, whether the ruler can be called to account for constitutional wrongs and whether the subject may resist the enforcement of wrongful commands is, for classical liberalism, a further question.

Classical liberalism's public reason for rule and obligation generates a particular reason for singling out the freedom of speech for special protection against legal regulation. That reason is not particularly uplifting. It is simply that my freedom to say what I please is compatible with the equal freedom of all to say or do what they please without regulating what people can say. Having no impact on the choices of others, choices of what to say are *inherently* conformable to the axiom of right. It is therefore unnecessary to reconcile them by means of a regulation permitting some level of hindrance while prohibiting the excess. This is just what one cannot say of freedom of action. The freedom to act in the world necessarily brings choices into collision. My choice to stand here prevents anyone else from doing so without interfering with my choice. My choice to pick up this apple forecloses your acquiring it without interfering with my control over my body. Given the necessity that external freedom will bring some choices into collision, the right of equal freedom requires me to suffer your liberty and you to suffer mine within bounds consistent with equal liberty. The role of regulation is to draw these bounds. It is to set the limits within which each may impose on the other consistently with their equality as independent ends. So, where freedom of action is concerned, rights to liberty

issue from the mutual accommodation of liberties under a rule. In that sense, they are creatures of regulation.

By contrast, the right to free speech exists independently of regulation. Whereas freedom of action cannot exist without some mutual hindrance of choice, the freedom to say what one pleases can. What I choose to say can never stop you from saying or doing what you please. True, you might try to drown out my voice or to monopolize the time and place for speaking, and that is why the right to free choice is realized, not infringed, by regulation for time, place, and manner. However, it *is* infringed by regulation of *what* we can say. Our freedoms to say what we choose are reconciled without legal regulation. No doubt, you might hurt my feelings by what you say, but you cannot do so without my choosing to internalize what you say, and so you interfere with no freedom of mine to pursue ends of my choice. In sum, freedom of speech requires no content regulation to make it consistent with equal liberty. It is consistent with equality prior to regulation.

It follows that any regulation of speech content violates the axiom of right that the public authority is duty-bound to specify and enforce. It curtails liberty more than is necessary to secure equal liberty. For classical liberalism, therefore, content regulation of speech is *ultra vires* the legislature. It is an exercise of coercive authority to which no independent end could assent. Content regulation is not merely invalid *pro tanto* – that is, unless justified by reasons of public policy sufficiently important or weighty. It is invalid simply. Where giving force to the axiom of right is the sole public reason for submission to authority, a ruler's violating the axiom suffices to denude his command of authority. Short of state emergency, no public policy can save it.

What, however, of libel and incitement to crime? Surely, speech contents of these kinds violate the axiom of right enjoining respect for persons and may therefore be prohibited by law under classical liberalism. If that is so, what becomes of the classical liberal reason for protecting speech – that speech is consistent with the axiom of right prior to regulation?

Libel and incitement are indeed cases to which the rationale for immunizing speech content against regulation does not apply, but they do not subvert the rationale. This is because a practice of free speech does not entail that libels and incitements to crime must occur. Free speech can thrive without libels or incitements, and so it remains true that our freedoms to say what we please *need not* involve externalities affecting choices in the way that our freedoms to act in the world must. Such externalities are not impossible, but neither are they necessary. Free speech can be isolated from general liberty on that basis and be accorded immunity from regulation where the rationale for immunity applies. We can then carve out kinds of speech to which the rationale for immunity does not apply, yet still hold on to the idea that, unlike action, free speech can be conceived without the necessity of conceiving collisions between choices. As a rule, therefore, a law regulating speech contents will be *ultra vires* the lawmaker because it will violate the axiom of right that the public authority

is constrained to specify and enforce. But there will be exceptions for libel and incitement, which themselves violate the axiom and which the public authority has a duty to proscribe.

Observe that classical liberalism's reason for immunizing civil speech from legal regulation applies only to words and not to action expressive of meaning. Lying outside the reason for protecting speech, expressive action falls into general liberty, where it is open to legal regulation for the purpose of equalizing liberty or of preserving the infrastructure of a rightful condition. Thus, flag-burning and carrying a *kirpan* receive no constitutional protection here. On the other hand, the reason for protection, applying as it does to words *per se*, spreads the blanket of protection indiscriminately over commercial, hate, artistic, religious, and philosophical speech. For the purpose of identifying a valid exercise of authority, all are on a par. All come within the reason for isolating speech from general liberty and according it constitutional protection. But further, all receive the benefit of what may be called classical liberalism's constitutional philistinism. Because classical liberalism knows no common good qualified to override rights of equal liberty, regulating offensive or harmful speech for whatever public goal is *ultra vires*. Where equalizing freedom of action in the face of externalities affecting choice is the sole justification for legal regulation, the prohibition against regulating speech content is virtually absolute. Within the sphere to which the rationale for immunity applies, nothing but the need to preserve the constitutional order can justify the legal restriction of what one may say or write.

Accordingly, if the public specification and enforcement of the axiom of right were the sole reason for rule and submission, commercial speech not amounting to fraud as well as speech promoting hatred of a group would be immune from regulation. The distinction between speech for profit and speech for propagating a profoundly held belief is insignificant here, as is the distinction between harmful and harmless speech. Where all goods are infrastructural supports for a rightful condition and where none can justify overriding the axiom of right, both non-fraudulent commercial speech and hate speech not inciting others to violence will enjoy protection up to the point of constitutional crisis.

The constitution of liberty can be criticized in light of its own standard of rightful authority. That constitution reposes rightful authority on a public reason reconciling authority and independence. Yet libertarianism's public reason for rule and submission is not sustainable as a public reason, nor is the axiom of right a constraint on rule sufficient for reconciling authority and independence. This is so because, if persons are thought to be morally self-sufficient, depending on no civic body for their dignity, then their critical reason will be entangled with their pre-civic right of unilateral judgment as to what constitutes a violation of the axiom of right. And so when, to cure the defect of the pre-civil state, they surrender their right of unilateral judgment to a sovereign public authority, they will also surrender their right to hold the public authority

accountable to their critical reason for its constitutional wrongs and to resist enforcement of its unconstitutional commands; for such a right will appear as a revival of anarchy. They will therefore constitute a public authority that is once again unlimited in the sense that it will be unaccountable for breaches of its duty to legislate solely for the sake of its subject's independence.<sup>53</sup> The sovereign will have and acknowledge such a duty, but calling it to account or disobeying a command considered unlawful will engage (or seem to) the very unilateral judgment that the civil condition was meant to overcome.<sup>54</sup> So, while the ruler acknowledges a duty going with its authority to respect the subject's independence, it acknowledges no duty to avoid being judge in its own cause as to whether it has conformed to its duty; it is supreme lawgiver and supreme court rolled into one. Put otherwise, the sovereign lawgiver has no duty to be right in determining whether its commands are consistent with the axiom of right, for it has a monopoly on authoritative judgment. Any authority to judge the rightness of its commands would contradict its supreme authority and place such authority in the judge, who would in turn be unaccountable. As a consequence, the ruler is once again an unlimited despot, and the subject has lost its independence in submission to rule. For its part, the public reason under which the supreme commander rules has collapsed into the private opinion of the commander. Constitutionalism has failed.

In a world where libertarian constitutionalism is the model of political authority (roughly from 1789 to 1945), the entrenchment of civil rights in a supreme written law interpreted by a court coordinate in authority with the legislature is optional. Since the sovereign is sole judge of whether its commands are valid specifications of the axiom of right, there is no conceptual impetus to entrenchment. The issue thus falls to be decided on prudential grounds. The question is: in whose hands are constitutional rights safest – a representative assembly of the ruled or an elite judiciary? Where the choice is for the judiciary, it is thought that a despotism of judges is avoidable only if they interpret the written constitution as a positive statute of the founders, whose understanding of the entrenched rights (no matter how incoherent) is the key to their authoritative meaning. Thus constitutionalism dissolves into the despotism of the (dead) founders. Where the choice is for Parliament, bills of rights are mere guides to statutory interpretation for subordinate courts, which are powerless in the face of clear legislative language violating the right. Here constitutionalism dissolves into the despotism of a parliamentary majority.

The failure of classical liberal constitutionalism teaches that a further desideratum of constitutionalism is that rulers be accountable for breaches of the public reason under which they claim to rule. Otherwise, they rule as natural persons with private opinions about their actions' legality, not as officers of a public reason all independent subjects can accept. Further, the logic that took us from anarchy to authorized despotism shows what must be rethought if rulers are to be accountable without their subjects' reverting to anarchy. In particular, the rational necessity for entering a civil condition shows that classical

liberalism was mistaken to think that individual agents are morally self-sufficient – that they depend on nothing but their free wills for their dignity. Evidently, they require a civic union for their realized dignity. But then it was also a mistake to treat anarchy as humankind's natural condition and to measure rightful rule by whether it conforms to an axiom of right enjoining official respect for the greatest possible liberty of atomistic, mutually indifferent, supposedly self-sufficient persons. The impossibility of rights without a common authority teaches that the normative benchmark is instead an ideal civic union guaranteeing everyone's independence and of which all are equal and self-ruling members. Must we not regard such a union as the state natural to dignified beings rather than view as that state an anarchic condition that natural law precisely enjoins us to quit? If so, the argument for unlimited sovereignty never launches. If the justification of civil authority need not begin from rights to unilateralism in a pre-civil condition, then persons need not alienate their critical reason to an unlimited sovereign in order to establish the rule of law; for the link between critical reason and unilateral judgment (private reason) would be severed. The function of holding rulers accountable to the public reason for their rule could belong to judicial organs of the civic body so structured by rules of selection, qualification, and tenure as to be themselves independent organs of public reason.

#### *5.4 The Constitution of Equality*

With this arc of thought, we have moved to a new paradigm of constitutionalism. Here the public reason for rule and submission is not to perfect a pre-civic duty of atomistic persons to respect each other's sphere of liberty. It is rather to enjoy a fair scheme of civic cooperation ordered to everyone's independence. The original position is not anarchy but an imaginary congress of disinterested thinkers charged with elaborating the principles of justice implicit in already going liberal orders. Here, accordingly, the meaning of independence can be disentangled from its narrow meaning for the atomistic persons of classical liberalism. It is not simply the free will's independence from others' coercive imposition of ends; it is also the economic independence that moral subjects require in order to shape their lives according to a deliberative conception of the good, and it is the political independence they gain through participation in law-making and administration. So, independence now has the richer meanings of private self-determination and democratic self-rule, of which the freedom of choice protected by negative rights is only a precondition.

So understood, independence is a human good, the enjoyment of which is faring well by an objective measure. And because classical liberalism recognized no universal human good promotable by authority, the emergence of such a good leads to a new covenant between authority and subject. The ruler's authority is conditional on his being under a positive duty to provide the conditions for all to become self-ruling citizens and self-authoring moral subjects – in other words, to promote the common welfare. Correlatively, subjects are entitled to

these goods as a condition of retaining the moral independence that qualifies them to validate authority through obedience.

With the new covenant comes a new – let's call it the egalitarian – axiom of right. It is that rulers have a duty constitutive of their authority to provide their subjects with equal access to the means of self-rule and to show equal concern for their leading lives of their own authorship. Because, moreover, self-rule demands that the ruler be accountable for breaches of the new public reason, the ruler now has a duty to be right where a right answer exists and a duty to be reasonable where it does not. So its commands must now be reviewed by independent and co-ordinate judges for consistency with *a priori* determinations of public reason; and they must be reviewed by representatives of the ruled for their reasonableness in implementing the common welfare. Sovereignty resides not in one state organ alone but solely in the public reason in which all three branches are complementary partners.

Whereas classical liberalism's constitution was the constitution of liberty, the new one is the constitution of equality. This is so because guaranteeing to everyone the conditions for self-rule and self-authorship requires eliminating the absolute disadvantages some face because of sheer bad luck and which result either in not having enough to sustain life or in having just enough: low endowment, impoverished starting places, and interruption of income. It thus requires public allocations of resources that reject as normative the historical and haphazard allocations resulting from subjects' having the maximum freedom of acquisition consistent with respect for free choice and established holdings. This means that, within the new constitutional order, classical liberalism's axiom of right is superseded. There is no longer a right regardless of its welfare consequences to the maximum liberty consistent with equal liberty, and so the public authority is not constrained by such a right. It may, for example, limit the kind of contract terms to which parties of unequal strength may voluntarily agree; it may impose a legal duty of care for the welfare of those put at foreseeable risk by one's activity; and it may force someone to relinquish part of his holdings so that others can have enough to support a life of self-authorship.

But further, there is not even a right to the maximum liberty consistent with equal self-rule and self-authorship – with the attainment of egalitarian goals. Such a right would imply an independent right to liberty, and yet for the constitution of equality there is no such right.<sup>55</sup> This is so because an independent right to liberty is so far enmeshed with classical liberalism's apolitical and ego-centric conception of the person that the constitution of equality has surpassed in favor of a civic conception. Still shadowed by what it opposes, the egalitarian constitution equates an unreduced right to liberty with welfare-blind, civically indifferent license, and so it recognizes no right to liberty apart from what fair terms of cooperation define. For it, there is only an equal entitlement to the conditions of self-authorship and self-rule, of which legal rights against interference with liberty are but one. Accordingly, the right to liberty is here mediated by an all-things-considered judgment as to what the common welfare requires; it does not exist separately. If we call classical liberalism's axiom of right axiom<sub>1</sub>

and egalitarian liberalism's axiom of right axiom<sub>2</sub>, we can say that the public authority is now constrained by a duty to specify and enforce axiom<sub>2</sub> but not axiom<sub>1</sub>.

This changes drastically the rationale and scope of the constitutional right to free speech. First, the classical liberal reason for protecting free speech against regulation is ousted. If there is no right to the maximum liberty consistent with equal liberty, then there is no pre-legal right to free speech based on the idea that, as a rule, regulating speech contents limits liberty more than is necessary for equal liberty. Of course, free speech is still protected, but for a different reason. It is that the freedom of conscience and expression is precisely the freedom to form and live out a self-authored conception of the good toward which the civic union is ordered. This freedom is protected against content regulation, because egalitarian liberalism knows no other good of constitutional stature that could possibly limit its rightful exercise. Self-determination is considered the supreme good, and it is a formal good hospitable to any and every content – to every substantive opinion about what ends make life valuable. All substantive goods are subjective conceptions of the good, and they are on a par. The ruler's duty of equal concern for self-authorship (axiom<sub>2</sub>) precludes its treating certain conceptions of the good as inferior in worth to others, no matter how repugnant they are to the moral majority.<sup>56</sup> Any regulation of speech content subordinates the speaker to another's opinion of the good contrary to axiom<sub>2</sub>. It turns public reason's rule into sectarian rule.

With this new reason for privileging free speech above general liberty comes a new scope for protected speech. First, classical liberalism's speech/action dichotomy is superseded. What is now protected is the free *expression* of a conception of the good, and expression can take any communicative form, non-coercive action included. In that sense, the scope of protected expression expands. In another sense, however, it contracts, for egalitarian constitutionalism introduces a dichotomy of its own – that between expression within the core of protected expression and expression outside the core. Because what is protected is only the authorship and expression of a conception of the good, speech that does not express fundamental or conscientious conviction falls outside the reason for protection and into general liberty. It is not protected at all, for axiom<sub>1</sub> no longer constrains the ruler.<sup>57</sup>

Consider, for example, commercial pornography. Assuming a public (egalitarian) purpose, the regulation of commercial pornography is now immune from scrutiny, for (a) not being conscientious self-expression, commercial pornography falls outside the egalitarian rationale for protecting expression; (b) there being no right to the maximum liberty consistent with equal liberty, there is no reason to protect commercial pornography simply as speech; and (c) there being no welfare-independent right to liberty, there is no requirement that subjects enjoy the maximum liberty consistent with attaining the legislative goal, and so there is no reason to protect pornography as liberty either; legislative overbreadth is no constitutional wrong here. By contrast, speech or (non-violent) action expressive of conscientious conviction receives virtually

unqualified protection, for, as we saw, there is no good known to egalitarianism that is qualified to limit the right of self-determination; nothing short of a constitutional emergency will do. Speech inciting hatred of a racial, ethnic, or religious group expresses conscientious conviction.

To be sure, the boundaries of expression may be drawn so as to accommodate other basic rights of self-determination (e.g. to a fair trial), thereby securing the best scheme of rights-protection overall. But adjustments of that sort delineate – they do not limit – the right to free expression, for final rights issue from the balance among various specifications of the one basic right of self-determination. Only a good other than formal self-determination could limit a *right* to free expression; hence only a substantive good could do so. But egalitarian liberalism won't allow a limit on expression for a substantive good, there being (within this paradigm) no public ones. So, where we once had indiscriminate protection of speech contents, we now have all-or-nothing protection. Commercial speech is unprotected; hate speech is sacrosanct.

It might be thought that speech denigrating some human beings as inferior in dignity to others can be prohibited under the egalitarian constitution because such speech violates the constitution's basic norm of equal human worth or because it tends to undermine self-respect – a condition of self-authorship. However, this is not so. The constitution's norm of equal concern for self-determination requires rulers to show equal respect for every agent-relative conception of the good, and it requires subjects to tolerate conceptions of the good repugnant to their own. That follows from the formalism or content-neutrality of the good of self-determination as egalitarian liberalism conceives it. For rulers, the equal worth of human beings is a basic norm, but for subjects it is only one agent-relative conception of the good among others; and there is no requirement that private conceptions of the good (as distinct from external actions) agree with the public conception; that requirement would violate axiom<sub>2</sub>. So subjects are free to express anti-egalitarian views in their private lives. Moreover, hate speech can undermine self-respect only in those who allow it to do so, and so there is no necessary link between hate speech and loss of self-respect. Therefore, a law restricting hate speech for the sake of self-respect is not one all could accept *a priori*. It amounts to subordinating the self-determination of some to that of others, contrary to axiom<sub>2</sub>.

In a world where the constitution of equality is the model of political authority (roughly 1945 to the end of decolonization), the enforceability of civil rights against the ruler is understood as a juristic necessity – a requirement of valid authority under public reason. There is thus a sudden proliferation of domestically entrenched bills of rights, whereas previously they were the exception. Right-infringing commands that a constitutional court deems unjustified by criteria indigenous to the constitution of equality are invalid irrespective of what the drafters of the constitutional document empirically intended or may be taken to have understood. Subjects need not obey them, and they may lawfully resist the ruler's attempt to enforce them in defiance of the court.



We must now ask whether, taken by itself, the egalitarian constitution satisfies the form of an ideal recognition between ruler and subject such that the subject remains independent in submission to the ruler and the ruler remains independent in being a means for the ruled. We can see that, like the constitution of liberty, the egalitarian one produces an *instance* of ideal recognition in that it grounds political obligation in a reciprocal duty of concern for the subject's independence. But does it produce ideal recognition itself? We can also see that it produces something necessary for an ideal recognition, for it guarantees the conditions for the moral conscience's independence that libertarian constitutionalism left to chance; and it supplies the supremacy of law (in the sense of *Recht*) that, in the constitution of liberty, dissolved into the ruler's unilateral judgment. But does it produce what is sufficient for an ideal recognition?

To see that it does not, consider what follows from the fact that axiom<sub>2</sub> constrains the ruler, but that axiom<sub>1</sub> does not. Under the egalitarian constitution, the ruler has a duty of equal concern for everyone's capabilities for self-rule and self-authorship but no duty to respect individual liberty as a separate value. Thus there is no presumption in favor of liberty – no constitutional wrong in limiting liberty more than is necessary for achieving the ends of civic membership. But the right to liberty is the right of the discrete self – the self that is distinct from the civic body and its members. That self is not necessarily the atomistic free will of classical liberalism's state of anarchy; it might be the specific character in which a common way of life is individuated and who gives the common custom a distinctive interpretation and realization. In treating all entitlements of the subject as those of homogeneous citizens – as rights mediated by civic membership – the egalitarian constitution withholds recognition from the discrete self. But if the individual self is not a discrete end, then the civic body is the only end, to which the discrete self is once again unilaterally subordinated. And a civic body that is juxtaposed to a discrete self it subordinates and treats as right-less is a partisan body in relation to that self – in this case the partisan body of those who, under the constitution of liberty, would lack the means of economic independence.

Accordingly, the egalitarian constitution taken alone produces a despotism of the collective body. The representative of that body cannot wrong the subject by limiting liberty more than is necessary for its egalitarian ends, by limiting liberty drastically for the sake of a marginal gain in equality that is small relative to the gain obtainable by a non-invasive option, or by taking private holdings for public ends without compensation. The subject recognizes the civic body as an end, but the civic body does not recognize the discrete person as an end. Yet from such a servile relationship no independent validation of authority can issue.

### 5.5 *The Communitarian Constitution*

The downfall of egalitarian constitutionalism teaches that the public reason for submission to authority must be to guarantee the independence of the subject

considered as both a discrete agent and a civic member. “Both” must be understood in the sense of “unison” rather than mere “togetherness”; for if human self-consciousness is sundered such that, to be a citizen, one must lose one’s ego, and to be for oneself, one must be anti-civic, then no possibility exists for a public reason encompassing the independence of both citizen and ego, hence none for constitutionalism in the strict sense. There can only be an eternal conflict (oscillation, negotiation) between the constitution of liberty and the constitution of equality and between the political moralities and parties that respectively champion them. So the new conception of public reason must involve a conceptual synthesis of civic member and discrete ego.

The communitarian constitution is ordered to such a conception. Here public reason is the mutual recognition of ruling representatives of a common way of life (ethos) and the individual character who freely makes it a way of *his* life. On the one hand, the community values the free volition and moral self-determination of the discrete subjects through whom the ethos flourishes in a profusion of interpretations; on the other, subjects conscientiously internalize and reproduce the ethos as the common good that ascribes importance to (hence dignifies) their individuality. Rulers are authoritative insofar as they acknowledge a duty to perpetuate the communal ethos under the constraint that the free agency and self-determination of its adherents be respected. Call that axiom<sub>3</sub>. What the ethos is, is indeterminate. It may be a folk culture, a particular religion, secularism, liberal capitalism, egalitarian liberalism, whatever.

Under the communitarian constitution, the basic freedoms the ruler is duty-bound to respect are those necessary for actualizing the ruling ethos. So freedom of conscience and expression are protected above general liberty because of the role they play in bringing the ethos to life in its adherents’ practical endorsement of its customs and norms.<sup>58</sup> This reason again engenders a distinction between protected expression within the core and unprotected expression outside the core; but now what is inside the core is determined as much by the nature of the ethos as by the conscientiousness of the expression. For example, speech promoting hatred of out-groups falls within the core if it gives expression to an elitist (e.g. racist) communal ethos, but not if it is at odds with an egalitarian liberal ethos. This marks a crucial difference from the constitution of equality. Where egalitarian liberalism is regarded as one ethos among others rather than as public reason itself, the content-neutrality of public reason goes by the board. Expression denying the equal worth of human beings may be outlawed as propagating an ethos incompatible with the ruling, egalitarian one. So misogynist pornography can be outlawed even if (especially if) it expresses conscientious conviction. Similarly, religious self-expression (for example, in the *niqab*) reflecting the subordinate status of women can be outlawed as opposing the constitutional ethos of gender equality.

Because the communitarian constitution protects the basic freedoms for the sake of the ruling ethos, it favors certain speech-contents over others, hence favors the adherent of the ruling ethos over the non-adherent – the insider over

the outsider. Where the ethos is classical liberalism, expression antagonistic to that ethos (for example, the promotion of communism) is vulnerable to prohibition if it presents an imminent danger to that ethos. Where the ethos is a particular religion, only religious expression that actualizes the communal ethos is protected; outsider religions fall into general liberty. In a secular ethos, religious expression as such is vulnerable to limitation if it is perceived as a threat to the dominant culture. Accordingly, in the communitarian constitution, we can no longer speak of human rights constraining the sovereign, but only of the rights of Britons, Americans, West Europeans, etc., who share a human rights tradition. Muslim citizens who dissent from that tradition's full content (from its egalitarianism, for example) are in the same position as non-Muslim citizens of an Islamic constitutional republic: outside the communitarian covenant.

It would seem from the foregoing paragraph that the basic freedoms are protected by the communitarian constitution only when there is no need for protection, for the dominant cultural group has no reason to fear legal curbs on the propagation of its own values. This, however, is not exactly true. After all, to respect the free agency and moral self-determination of subjects for the sake of the ruling ethos's realization is to risk disagreement with that ethos. Accordingly, some non-conforming expression must be tolerated by rulers in order that the dominant ethos might be spontaneously confirmed as authoritative through conformist expression. Still, the duty to tolerate does not rule out limitation. There are ways for rulers to meet their obligation to perpetuate the public ethos while respecting their subjects' freedom to be different. They can outlaw non-conforming expression in public spaces, while allowing them in private spaces, or outlaw non-conforming expression in civil servants, while allowing them in the private sector, or ban forms of expression perceived as threats to the ethos while allowing innocuous forms of non-conformism.

The communitarian constitution is a covenant exemplifying the form of an ideal recognition. Subjects acknowledge the authority of ethos-representatives for the sake of the rational importance the ethos ascribes to their free interpretation of the ethos in their individual lives and characters. Reciprocally, ethos-representatives defer to the free genius of their subjects for the sake of the spontaneous and individualized reproduction of ethos. But is this mutuality sufficient for valid authority? Do we have here an ideal recognition such that the public reason for rule and obedience survives deference to the subject and the subject's independence survives submission to the ruler?

The answer is obviously "no." In that the way of life toward which the communitarian constitution is ordered is conceptually undetermined, it is opaque to intellect. Ethos is simply the custom that is there and that has been for as long as anyone can remember. As a consequence, the public reason of the communitarian constitution is hostage to a requirement of empirical unanimity. As soon as one subject asserts his difference, the public reason becomes a parochial one. Subjects who identify with the now dominant ethos have an independence-based reason to accept the authority of ethos representatives, but the different

do not. Their submission (for whatever reason) entails a loss of independence, for their moral independence is tolerated within limits, not positively valued, and the limits are drawn by what is good for others. Thus, the ethos-ruler is a despot vis-à-vis them. He cannot wrong the different by limiting their conscientious expression for the sake of the customs of the same. But then the ethos-ruler has lost the independent subject required to validate his authority. Because his authority can be validated by some but not by others, constitutional rule has dissolved into ethnocultural chauvinism.

## 6 Just Authority and the End of Ideology

The breakdown of communitarian constitutionalism reveals a further desideratum of an ideal recognition between authority and subject. There must somehow be a covenant of mutual recognition between the representatives of a common way of life and the outsider. Outsiders must acknowledge the authority of a way of life that values their outsider status, and the political community must defer to the outsider's independence for the sake of its validation as the individual ego's natural end. This, however, sounds impossibly paradoxical. What sort of communal way of life can defer to the outsider for confirmation of its natural authority?

The answer lies behind us – along the road already traveled and in the constitutional orders sojourned in. As before, the way forward is to reflect on the failures of the past, but this time on the past conceived as a logically coherent narrative about the solitary ego's education to the political ground of its fulfilled independence and about the ruler's education to the full conditions of its valid authority. The community that engages the outsider as an equal partner comprises in logical sequence all instances of the ideal form of recognition produced by the *apolitical* (atomistic) individual as it journeys from presumed moral self-sufficiency to the constitution of liberty to the constitution of equality to the ethos constitution to the comprehensive constitution sufficient for independence. Through this *curriculum*, the political community ordered by the comprehensive constitution – the constitution embracing the previous three – is validated as the independence-seeker's final end by one who initially claims independence outside community. Reciprocally, that community values the outsider's moral independence as that through which its end-status is confirmed by an independent adversary.

Let me call the way of life instituted by the covenant between the political community and the outsider the life of the dialogical community. This way of life is no longer an indeterminate ethos. It has a specific, intellectual content comprising the three conceptions of public reason connected by the logic of their transitions, along with their respective constitutional paradigms and axioms of right. Together, the three constitutions generate the totality of constraints on rule necessary and sufficient for reconciling authority and independence, hence for valid authority and unqualified obligation. This totality is

the full content of civil rights complementary to perfect political authority. Its constituent elements are: the classical liberal axiom of right enjoining public respect for the maximum liberty consistent with equal liberty and so recognizing the individual's independent worth as a *free will*; the egalitarian liberal axiom of right, enjoining equal public concern for the individual's self-rule and self-authorship and so recognizing the individual's moral independence as a *self-determining conscience*; and the ethos community's axiom of right, enjoining public respect and concern for cultural communities viewed as sources of worth for *specific characters*. Accordingly, the dialogical community is the one sufficient for reconciling authority with the independence of the *whole* subject – the subject clothed with all logically possible layers of concreteness: from extreme generality (free will) to generality determined (autonomous conscience) to extreme determinacy (specific character). This means that no logically possible construal of subject-independence is left unrecognized by the representatives of the common life of free individuals. Having for that reason an intellectual content endorsable by all liberal sects, the dialogical community is the inclusive community – philosophically diverse, yet unified.

In the dialogical community, all superseded conceptions of public reason are recovered, albeit demoted from sovereign conceptions to constituent ones. All are thought-stages in the apolitical self's education to the ground of its independent worth in the dialogical community and, correlatively, in the validation of that community as the final end of the worth-seeking self. As the subject learns by grades the full meaning of independence, political authority gains the fully independent subject it requires as a validating partner. Concomitantly, the subject gains a polity that acknowledges an obligation to guarantee all ingredients of its independence as a duty constitutive of fully valid authority. As grades of thought equally necessary to the subject's education to independence, the three conceptions of public reason are included as equal phases of one development, but also as equal examples of the archetype of ideal recognition between Whole and phase, the Whole respecting each phase's integrity as a constitutional *Gestalt*, the phase acknowledging itself as a phase of the Whole. Accordingly, the public reason alone absolutely entitled to that name is the developmental process itself, understood in its logical continuity. It is the ensemble of fallen conceptions of public reason connected by the logic by which the Whole came to sight and by which the fallen are raised to required stages in learning what public reason is. What public lawyers call the sovereignty of law is finally the sovereignty of public reason specified in this way.

What this implies for constitutional practice is that the diverse political moralities of liberalism are now intellectually constrained to interact on the basis of equality and mutual respect. No longer mistaking its constitutional paradigm for the archetype of valid authority, each respects the other's paradigm as an equal instance of the true archetype, within which all are contained. So, no political morality denigrates the rights protected by the others or reinterprets them from the perspective of its own hegemonic public reason.

In that sense, liberal pluralism is preserved, but within a differentiated Whole wherein the mutual accommodation of the paradigms is a demand – not a compromise – of principle. We thus have pluralism without fragmentation or sectarianism.

The juridical expression of the requirement that liberal political moralities interact on a footing of mutual respect is the method of judicial reasoning in constitutional cases known as proportionality review.<sup>59</sup> While often commended as being abstractly neutral toward political moralities, proportionality review is best understood as a method appropriately inclusive of them. Thus, in line with classical liberalism, proportionality review gives an expansive meaning to the basic freedoms, understanding by the right to exercise them a boundless permission to believe what one pleases, to communicate those beliefs in words, and to associate with like-minded others. So, it asks no questions about whether a particular case of speech instantiates the core value furthered by protecting speech against legal regulation; it protects free speech indiscriminately. But then, in line with egalitarian and communitarian liberalism, proportionality theory allows their public goods (autonomy, communal identity) to trump the expansively defined rights of classical liberalism. Yet it does not thereby side with these sects against classical liberalism, for it allows a trump only if the tests of rational connection (are the restraints on liberty narrowly tailored to the legislative objective?), necessity (can the objective be obtained just as well without violating liberty rights?), and proportionality (does the right-infringing measure's marginal superiority in effectiveness over non-invasive options justify the extent of the infringement?) are met, signifying that the liberty right continues to exert constraining force despite being trumped. In effect, proportionality review permits an egalitarian or communitarian limit on the basic liberties provided that these moralities reciprocally acknowledge a limit to their rule in a right to liberty established independently of them. This is the method that, perhaps moved by an intuitive grasp of Spirit's unity of constitutional wholes, Western courts have chosen as the one best suited to adjudicating complaints that the state has violated a constitutional right. I'll illustrate the method as it applies to a law limiting freedom of expression.

In the dialogical political community, all three reasons for protecting the freedom of civil expression are in play. Thus speech is indiscriminately protected above general liberty because, as a rule, speech content needs no regulation to make it compatible with equal liberty. So, apart from the few cases where the rationale for immunity is inapplicable, a law's restriction of speech content, even of commercial content, violates a right to free speech. That, however, is not the end of the matter, for the classical liberal axiom of right is not the only constraint on valid political authority, which also has a constitutional duty to promote the common goods of self-authorship and cultural membership. Accordingly, recognizing free speech as a right now means admitting only those reasons for limitation qualified to justify a right-infringement; and it means allowing the infringement only if it is necessary maximally to satisfy the admissible

reason and only if the marginal gain obtainable by choosing this instrument over a non-invasive one is significant enough to warrant the violation. The sole admissible reasons for infringement are the public reasons of the egalitarian, communitarian, and comprehensive constitutions. So, a law banning degrading commercial pornography or mandating unilingual commercial signs is justified only if necessary for, and not disproportionately restrictive relative to its marginal contribution toward, securing the conditions of equal self-authorship or preserving the public face of the language defining an endangered ethos.<sup>60</sup>

By contrast, conscientious expression is protected for the sake of self-authorship and ethos themselves. Limiting it can therefore be justified only by a public reason superordinate to the egalitarian and communitarian ones – namely, the comprehensive public reason of the political community sufficient for reconciling authority and independence. So speech inciting contempt for human beings because of their non-membership in an ethos group may be outlawed for the sole purpose of publicly teaching the equal importance of free minds to the dialogical community's critically endorsed authority as the comprehensive human good. Conscientious expression may not be limited for the reason that it satirizes, ridicules, or even threatens an ethos (for example, by lampooning the Prophet); for that would be to limit the free thought and moral independence required for confirming the dialogical community's authority for the sake of an ethos community whose entitlement to public recognition depends precisely on that authority's confirmation through prejudice-free critical insight. This holds true even if the expression is religious and the ethos secular, provided that, in the circumstances, religion is being protected for the sake of conscience rather than ethos. Where (as in Israel) religious ethos collides with secular ethos or where the private religious conscience collides with the private secular conscience, the solution is a straightforward mutual adjustment of liberties under a rule that allows both to co-exist.<sup>61</sup> But in a contest (such as France's) between the religious conscience and a public secular ethos with hegemonic ambition, the religious believer personifies moral independence, while the commissar of secularism is a secular Torquemada.

Let us now return to the opposition with which Hegel concluded his account of the rational constitution in the *Philosophy of Right*: that between the Crown and its ministers on the one hand, and the various non-government ethical interests represented in the legislative assembly, on the other. Today, that opposition is mediated by political parties one-sidedly espousing classical liberal (conservative), egalitarian liberal (social democratic), and communitarian (nationalist) conceptions of public reason. It is thus mediated in a way that fragments the state, turning it into a party state (the formal head of state now personifying a fictitious unity), albeit one in which all parties can aspire to dominate. The best one can hope for is a ruling coalition, from which, however, a public reason party can be excluded while single-interest parties hold the state hostage to their demands.

The juristic morality of authority makes possible the new covenant that resolves the impasse. The parties to the covenant are the Crown, on the one hand, and the political parties representing liberal conceptions of public reason, on the other. In light of authority's logical evolution, all such parties can renounce the hegemonic ambitions that turned their conceptions of public reason into a private reason and their constitutional regimes into despotisms. They can accept the authority of the inclusive conception of public reason that preserves the partial autonomy of theirs as organizing subsidiary constitutional paradigms within a unity of paradigms, each protecting an essential aspect of independence. With this covenant, ideological warfare can cease. Conflict between political moralities is replaced by the principled resolution of paradigm collisions in accordance with the method of proportionality by courts and legislatures exercising mutual oversight.<sup>62</sup> Political parties can now divide themselves on the basis of competing sets of judgments as to how best to actualize in positive law an agreed-upon conception of public reason. When so distinguished, the parties become modes of one political substance, the materialization of which in, say, an all-party Congress linking the Crown-in-council to the legislative assembly would bring the State's inherent unity into existence. Which party temporarily rules makes no difference, for given the division of powers as understood by Hegel, each can accept a constitutionally valid law as a reasonable determination of the common good.

## Notes

- 1 PR, paras. 209, 212, 215, 222, 224, 319.
- 2 PR, paras. 3, 175.
- 3 PR, para. 3.
- 4 MW, p. 315.
- 5 Phen, p. 16.
- 6 Phen, pp. 104–19.
- 7 Phen, pp. 109–10.
- 8 Phen, p. 109.
- 9 Phen, pp. 111–23.
- 10 Joseph Raz classifies authority as either *de facto* or legitimate; see *The Morality of Freedom*, p. 26. Max Weber's sociological classification (charismatic, traditional, legal-rational) reduces all authority to *de facto* authority, of which the types are variants. Rawls's classification of authorities into liberal, non-liberal but decent, and non-decent flows not from the notion of authority but from an avowedly political conception of justice suited to constitutional liberal democracies. Hence the classification is ethnocentric; see *The Law of Peoples*, p. 4.
- 11 Hart, *The Concept of Law*, pp. 18–25.
- 12 For Hegel's critique of social contract theory, see PR, paras. 75, 100, 258.
- 13 PH, p. 41.
- 14 PR, para. 93.
- 15 PR, paras. 10–20.



- 16 PR, para. 194.
- 17 LNR, p. 53.
- 18 PR, para. 18.
- 19 PH, p. 40.
- 20 MW, p. 304.
- 21 PH, pp. 42, 59.
- 22 PR, paras. 17, 20.
- 23 PR, para. 194.
- 24 PM, para. 502. Cf. PP, p. 33; MW, p. 53.
- 25 PR, para. 93 and 93A.
- 26 PH, pp. 31–32.
- 27 So Hegel says that the hero's right is the "higher right of the Idea against Nature"; PR, para. 93A.
- 28 PH, p. 39.
- 29 PH, p. 229.
- 30 Phen, pp. 113–5.
- 31 PR, para. 57.
- 32 In minimally partaking of the form of recognition, slavery lies at the border of the normless state of nature and a developing normative environment. Thus Hegel says: "Slavery occurs in man's transition from the state of nature to genuinely ethical conditions; it occurs in a world where a wrong is still right. At that stage wrong has validity and so is necessarily in place." PR, para. 57A. And in PH, p. 46, he writes: "The origin of a state involves imperious lordship on the one hand, instinctive submission on the other. But even obedience – lordly power and the fear inspired by a ruler – in itself implies some degree of voluntary connection." Thus, slavery is not part of the state of nature; it is the first step out of it, because the despot claims a *right* to rule by virtue of his manifesting freedom, and the slave acquiesces in that claim out of awe for the despot. And that, however minimal, is an example of the form of recognition.
- 33 PR, paras. 215, 132.
- 34 PH, p. 18.
- 35 Phen, p. 118.
- 36 PR, para. 215.
- 37 PR, para. 215, 222–4.
- 38 *Digest*, Prologue.
- 39 PH, p. 44.
- 40 *Matthew*, XX, 25.
- 41 *The City of God*, XIX, 24.
- 42 This qualification is explained below. Of course, those excluded from the covenant may also resist for the purpose of instituting the rule of public reason. But those for whose sake the prince rules may resist the prince (though he abide by the covenant) *only* for this purpose.
- 43 J. Bentham, *A Fragment of Government and an Introduction to the Principles of Morals and Legislation*, p. 10.
- 44 T. Hobbes, *Leviathan*, ch. 17.
- 45 *Ibid.*, p. 84.
- 46 *Ibid.*, pp. 112, 115–6.
- 47 Phen, pp. 313–5.

- 48 Raz, *The Morality of Freedom*, pp. 68–69, 73.
- 49 The validation of authority through an implicit covenant is consistent with Hegel's critique of social contract theory. What Hegel criticizes is the political theory according to which morally self-sufficient persons in a stateless condition constitute public authority for the purpose of protecting their pre-political rights; see PR, para. 258. One can reject this theory and still hold that it is through an implied covenant (or mutual recognition) between authority and subject that individual agents fulfill their essential nature as members of a political community whose laws are laws of freedom. On this account, the series of covenants between authority and subject (from the covenant of legitimacy to the final one of justice) occur *within* one developing juristic order.
- 50 Thus Hegel says that the equality of human beings is a true principle provided it is understood, not as a cosmopolitan truth applied by particular states, but as a principle embedded in the "concrete life of the state." See PR, para. 209.
- 51 GPR, para. 212.
- 52 MM, 6:230.
- 53 MM, 6:319: "[T]he sovereign has only rights against his subjects and no duties (that he can be coerced to fulfill)."
- 54 MM, 6:320: "[A] people cannot offer any resistance to the legislative head of state which would be consistent with right, since a rightful condition is possible only by submission to its general legislative will."
- 55 Ronald Dworkin, *Taking Rights Seriously*, p. 269.
- 56 R. Dworkin, *A Matter of Principle* (Cambridge, Mass.: Harvard University Press, 1985), pp. 353–65.
- 57 J. Rawls, *Political Liberalism*, pp. 335–6, 363–5.
- 58 Margaret Moore, *Foundations of Liberalism*, pp. 191–2; Charles Taylor, *Philosophical Arguments*, p. 193.
- 59 The leading proponent of the particular form of proportionality review justified here is Aharon Barak, *Proportionality: Constitutional Rights and their Limitation*.
- 60 R. v. Butler [1992] 1 SCR 452; Ford v. Quebec [1988] 2 SCR 712.
- 61 For example, in a conflict between freedom of movement and the undisturbed exercise of a religion requiring automobile-free streets on the Sabbath, a law might prohibit driving through an orthodox Jewish neighborhood only during the hours of Sabbath prayers; see Lior Horev v. Minister of Transportation, [1997] IsrLR 153.
- 62 There is no reason why judges should have the last word. Something like Canada's notwithstanding clause would permit the Crown-in-Parliament to override a judicial invalidation where a supermajority decides that the court has failed to show due deference to the Crown-in-Parliament on matters of empirical political judgment.

## Hegel and Internationalism

The nation state is Spirit in its substantive rationality and immediate actuality and is therefore the absolute power on earth. It follows that every state is sovereign and autonomous against its neighbours....At the same time, however, this title is purely formal, and the demand for this recognition of the state, merely on the ground that it is a state, is abstract. Whether a state is in fact something absolute depends on its...constitution and general situation; and recognition, implying as it does an identity of form and content, is conditional on the neighbouring state's judgment and will.

PR, para. 331

### 1 Introduction

Hegel considered the nation-state (*der Volk als Staat*) “the absolute power on earth” for the same reason that Aristotle considered the *polis* the final human association. It is, he believed, the ethically self-sufficient union – the one that fulfills all dignitary requirements of the human being. Unified by love and loyalty, the family and its extensions recognize the worth of determinate characters but not of abstract persons. The market and the administration of abstract right recognize the end-status involved in a person's free will, but leave to chance the fulfillment of the moral subject's potential for self-determination. The welfare bureaucracy and private cooperatives actualize a right to self-determination but do not integrate all requirements of dignity into the unified life sufficient for the dignity of the whole human being. The State comprehends all these associations (as the ensemble of instances of mutual recognition) within the one common life sufficient for dignity, and so the teleology of human dignity ends there. There is no conceptual impetus toward a more comprehensive union, hence no push toward a common authority to enforce the customary and treaty law regulating the interaction between states. In Hegel's words, “[t]here is no praetor to

judge between states; at best there may be arbitrators or mediators, and even these exercise their functions only contingently, i.e. in accordance with [the] particular wills [of the disputants].”<sup>1</sup>

Because there is no teleological drive toward an impartial authority above the subjective points of view of particular states, the rule of international law, Hegel says, is doomed to remain an “ought-to-be”; it can never be realized in a world state. So also thought Kant, but whereas for Kant a world republic establishing “perpetual peace” is an ought-to-be that states ought perpetually to approximate through treaties of alliance, Hegel considers it a dystopia – not even a worthy object of aspiration or striving.<sup>2</sup> For one thing, the goal is a mirage because every unity creates a foreigner, requiring more comprehensive unities *ad infinitum*.<sup>3</sup> For another, perpetual peace is not an unqualified good. In states organized as civil societies, it can lead to the disintegration of the body politic, as people treat their immediate biological lives with the infinite concern that is due only to their lives lived within the ensemble of duty-laden roles comprising an ethical life in the State.<sup>4</sup> War, through which the State periodically manifests its ontological priority within the context of civil society’s *bourgeois* individualism, wakes them up to reality.

The correct approach, Hegel thinks, is to accept a paradoxical situation that is in no way tragic or wrongful. Because state sovereignties are real only as mutually recognized, an international legal order enjoining mutual respect among states is necessary to fulfill the sovereignty – the right to self-determination – each state claims. Therefore, states have an obligation flowing from the notion of state sovereignty not to act inconsistently with the idea of such an order. In particular, they are obliged to honor their treaties, forbear from aggression, and, if opposing legal claims cannot be reconciled through diplomacy, conduct only limited wars always with a view to restoring normal relations between independent states: the rule of law is an ought-to-be.<sup>5</sup> But because sovereign states may unilaterally interpret treaties, determine whether or not they are in breach, choose whether or not to submit to arbitration, and decide what is aggression and what self-defense, the rights they claim cannot be perfect. This condition also ought to be, for the idea of state sovereignty that makes an international rule of law obligatory also makes its reality anathema. Fully realized, an international rule of law would annihilate, not fulfill state sovereignty. That is why it must forever hang suspended in the inchoateness of an “ought.”

There is nothing tragic about this paradox, provided it does not express itself (as in the inter-war period) as a tug of war between extreme internationalism annulling state sovereignty, on the one hand, and extreme nationalism denying the obligatory force of international law, on the other, each self-contradictorily asserting one side of the antinomy at the other’s expense. For if the nation-state is the ethically self-sufficient association, there is no reason to bemoan the absence of a superior authority that must perforce be unnatural and external. Put otherwise, if internal sovereignty is perfected in the fully constitutional

state, then there is no need for sovereigns to surrender their internal absolutisms (for they no longer exist) to a world sovereign in order to reach a perfect constitutional order. Nor is acting on the assumption that the nation-state is final “wrongful in the highest degree” (as Kant maintained), if natural law contains no dynamic driving beyond it.<sup>6</sup>

Accordingly, living with the antinomy in international law (a global legal order ought to be and ought not to be) turns out to be a logically more stable option than affirming one side and denying the other. Putting national self-interest above the rule of law abolishes the right to independence each state claims; fulfilling the rule of law in a world state abolishes the right to national independence it is supposed to perfect. Thus, a right to national independence requires that both sides of the antinomy be kept in play. Still, this does not mean that the antinomy is incapable of being transcended in a coherent synthesis reconciling plural sovereignties and perpetual peace. Hegel, of whom one might otherwise have said that he never encountered a contradiction he could not reconcile, actually leaves this one standing. It is perhaps the only case where he does so. Possibly, he considered a synthesis utopian, hence unsuitable for inclusion in a political science. But then nothing stops political *theory* from suggesting the middle term to which Hegel’s philosophy of the state points, and in the concluding section it will.

## 2 Contemporary Challenges to Hegel’s Nation-State Thesis

The rest of this chapter considers to what extent recent developments in international law and institutions relativize to his time Hegel’s statement that the nation-state is “the absolute power on earth.” On their face, the European Union and the International Criminal Court (ICC) contradict his claim that there is no authority beyond the nation-state.<sup>7</sup> They seem to relativize Hegel’s view of the nation-state analogously to the way the Roman Empire relativized Aristotle’s belief in the finality of the *polis*. After all, the treaties constituting the European Union establish a supranational Parliament with jurisdiction to legislate over a broad range of matters requiring collective action, a Court of Justice to apply the law and impose penalties for non-compliance, and a European Commission to propose laws and ensure their proper implementation by national governments. Even more challenging for Hegel is the ICC that sits in The Hague, for the Rome Statute gives it a compulsory jurisdiction over anyone in the world whom it accuses of genocide, crimes against humanity, and war crimes. Here, it seems, is just the independent “praetor” that Hegel thought must remain an unfulfilled idea. Are not these developments further evidence that Hegel’s science of the state twists historically contingent phenomena – here the nation-state recognized by the Peace of Westphalia ending the Holy Roman Empire – into metaphysical absolutes?

On closer examination, the European Union presents no problem for Hegel’s claim that the nation-state is the final human association.<sup>8</sup> Recall (from

Chapter 2) what Hegel means by nation (*Volk*). In his lexicon, that term does not necessarily designate an ethnic group unified by language and a common cultural heritage. For Hegel a nation is a people constituted as such by their union under a public authority charged with promoting a shared conception of their fundamental good. By that definition, Belgium is a nation even though it comprises several ethnicities and three official languages; and Europeans now constitute a nation by virtue of their union under common political and legal institutions. Furthermore, we saw in the previous chapter that, since specific characters derive worth from enlivening and reproducing a culture, the public authority's respect and concern for cultures is essential to the life sufficient for all dignitary requirements. If that is so, then the final human association is a multicultural constitutional state, of which the European Union is a prime example. So present-day Europe poses no challenge to Hegel's claim that the nation-state is the absolute power on earth. On the contrary, by demoting German-ness, French-ness, etc., to one ingredient of the total life sufficient for dignity, it confirms that thesis.<sup>9</sup>

The ICC is another matter. It is a permanent international tribunal with compulsory jurisdiction over residents of states that lack the means of holding their officials accountable for (in the Rome Statute's words) "the most serious crimes of international concern." The ICC's permanent status distinguishes it from the *ad hoc* tribunals set up in the aftermaths of World War II, the break-up of Yugoslavia, and the civil war in Rwanda to try perpetrators of wartime atrocities. Those tribunals posed no difficulty for Hegel's nation-state thesis, for, as creatures and instruments of a small group of states (the Allied Powers, the UN Security Council), they failed to constitute a genuinely supranational authority; as with "punishment" in the state of anarchy, the universal will was still enmeshed with the particular.

The ICC, by contrast, derives its jurisdiction from a multilateral treaty. Endowed thereby with independent legal personality, it decides on its own what referrals by treaty states to act on and can initiate investigations without a referral. Moreover, its compulsory jurisdiction distinguishes it from all other permanent international tribunals, whose writ extends only to states who agree to submit disputes to it or who have signed the treaties establishing it. The ICC is authorized to prosecute persons regardless of whether the state of which the accused is a national is a signatory of the Rome Statute. So it looks very much like an authority beyond the state. Nevertheless, I'll argue that the ICC too is consistent with Hegel's nation-state thesis.

### 3 The ICC as Judge of Crimes Against States

The ICC's purpose is to fill two lacunae in the world's administration of penal justice. One is the erstwhile absence of a permanent impartial tribunal to judge state officials accused of aggression or of breaking the laws of war governing the hostile interactions between sovereign states. The other is the absence in many

countries of enforceable limits on internal sovereignty, hence of domestic means for holding state officials accountable for crimes committed against their own people. In both cases the concern is impunity for state actors. The first absence creates impunity (except for retaliation) for violations of the rights of states as collective bodies; the second creates impunity for violations of human rights.

Although the Court's jurisdiction is compulsory, its mandate is not unconditional. It takes hold only if a national court with jurisdiction over the crime is unwilling or unable to prosecute those reasonably suspected of it. So the ICC's jurisdiction is meant to complement, not replace, national jurisdiction. Furthermore, although the Court may prosecute an official of a non-signatory state, only signatories to the Rome Statute or states that have made a special agreement with the Court are obligated to cooperate with the Court. And since the Court has no means of its own to arrest and detain, to collect evidence, or to secure the delivery of accused persons to the Court, this means that the Court's *effective* authority depends on state choice. Even with regard to signatory states the Court lacks a sword by which to enforce their obligation to cooperate, and refusal has so far been the rule.<sup>10</sup> All this bears out Hegel's statement that, even where an international praetor exists, he "exercises his functions contingently only, i.e. in dependence on the particular wills of the disputants."

Of course, the limitations on the ICC's effective authority might be historically contingent. It is conceivable that the Rome Statute is a step toward an international tribunal with not only compulsory jurisdiction but also an enforcement arm of its own. Imagine, for example, that the United Nations Security Council becomes the ICC's sheriff so that the Court can issue orders to arrest, deliver, detain, and punish officials of any state backed by the collective might of the strongest powers on earth. That is certainly an empirical possibility even if it is a remote one. A defense of Hegel's claim that the nation-state is the absolute power on earth must hold even supposing that fantasy came true.

The defense must begin with a distinction within the ICC's jurisdiction between crimes against states and crimes against ethnic groups and persons. The former include aggression and breaches of the Geneva Conventions and customary law pertaining to the conduct of war; the latter embrace genocide and crimes against humanity – for example, murder, deportation, or enslavement carried out on a mass scale against a civilian population. Let us first consider whether an ICC with the UN Security Council as its enforcement arm and with compulsory jurisdiction to prosecute crimes committed by one state against another would refute Hegel's thesis. If it would not, then we can consider even more robust international institutions.

It would not. A court's conclusion that a state has committed aggression or has violated the laws of war is never syllogistically determined. As the application of legal criteria to facts, judgment necessarily engages the judge's subjectivity in the space where legal criteria cease to compel an answer. Within the national state, that element of discretion is reconciled with the universal

will through the complex architecture of institutions discussed in Chapter 5. It is taken on by a head of state beholden to no faction – one who claims that his subjective will is nothing but the subjectivity conceptually involved in the universal will's self-determination. That claim is then confirmed by the head of state's only willing into force conclusions reached by independent and expert judges whose qualifications are tested and whose appointment is approved by an assembly representative of all who are subject to their authority. In turn, the judiciary confines itself to conceptual analysis, putting the subjective residue on the head of state's shoulders and leaving interested prosecution to another branch of the civil service.

No such architecture exists to confirm the purity of the international court's discretion where there is only a court and its acting sheriff, where the same court is prosecutor in one office and judge in another, and where judicial appointments are approved only by state parties to the treaty. On the contrary, the court's conviction that its subjective will is nothing but the universal will's self-determination is contradicted by its alliance with the group of states it relies on for enforcing its orders and that the accused state sees as enemies. Hegel's point is that the *excellent* nation-state is the absolute *authority* on earth – the only one that can command an unqualified obligation; that therefore each particular nation-state is potentially an absolute sovereign within its territory, so that there is no ethical dynamic toward humanity's sovereignty over the earth. The international criminal court we have envisioned does not contradict that thesis. A non-signatory state judged criminal by judges whose discretion is never constitutionally sanitized, in whose appointment it had no say, and that is allied with states it perceives as enemies would have no obligation to submit to the court's orders; indeed, were its leaders delivered to the court by another state, it could use necessary force to secure their release. Accordingly, the court we have imagined could never become an absolute authority obliging all those over whom it exercises power. Its authority would therefore be inferior to that of the nation-state.

It seems, then, that nothing short of a world federation of states with a constitution replicating that of excellent constituent states could plausibly serve as a counterexample to Hegel's claim that there is no authority on earth superior to particular nation-states. Since we cannot dismiss such a federation as an empirical impossibility, we have to test Hegel's claim against its imagined existence. So let us conjure it into being. Is Hegel's thesis now refuted?

Again, the answer is "no." And the reason is that, as Kant and Hegel agree, such a federation is susceptible to tyranny, hence cannot be the unconditionally universal will to which alone an absolute obligation is owed. With Kant, this seems to be an empirical prediction based on the practical problems of self-government in a vast state, but with Hegel it is a statement of ethical necessity.<sup>11</sup> A world government *must* be susceptible to tyranny because of the fundamental dis-analogy between the condition of dissociated individuals and that of dissociated states. Dissociated individuals stand in a state of contradiction between



their claim of moral self-sufficiency as dignified ends and the impossibility of rights in a condition of anarchy; hence there is a logical necessity for moving to a public order to fulfill the inchoate rights they claim – a necessity that reveals their claims to self-sufficiency as mistaken. Dissociated states stand in no such state of contradiction. They stand (as we saw) in a state of contradiction with respect to their external sovereignty but not with respect to their internal self-sufficiency. As totalities comprising families, markets, the rule of law, ministries of education, health, welfare, and culture, a professional civil service, private corporations, religious associations, democratic institutions, and judicial review of legislation and executive action, they are ethically self-sufficient entities in the sense that they potentially contain all the conditions of a dignified human life. They need not go outside themselves to fulfill themselves.

It follows that there is *no natural common good* in forming a world federation. Weaker states would benefit from the collective security against aggression, but stronger ones would weigh the good of security requiring a sacrifice of their autonomy against the good of security obtainable by relying on their own strength or on alliances. True, a world federation would abolish the condition of no-peace, but alliances can deter hostilities within such a condition; and if the deep cause of no-peace is the state's need of enemies for its internal unity, then the state's achieving unity through its internal constitution would mean the evaporation of the friend-enemy distinction without the surrender of national sovereignties.

The upshot is that there is no non-contingent common good that would be served by a world government. But if that is so, then such a regime will only accidentally be in every state's interest; and so there would be no absolute obligation to enter it or to remain in it. So, Hegel's remark that a world federation "would always depend ultimately on particular sovereign wills and for that reason would remain infected with contingency" turns out to be well founded.<sup>12</sup> By contrast, the particular nation-state, as the repository of the final human good, is the absolute authority on earth.

## 4 The ICC as Judge of Crimes Against Human Rights

### 4.1 *Two Views of the ICC's Jurisdiction*

The ICC has not only a compulsory jurisdiction to prosecute state officials for violating the rights of other states; it also has a compulsory jurisdiction to prosecute officials for violating on a mass scale the human rights of individuals subject to their internal authority. This jurisdiction poses a different sort of challenge to Hegel's thesis about the nation-state's finality. It suggests that human rights are, as Kant believed, innate in humanity prior to the state rather than embedded in particular constitutional states; and that the ICC, as humanity's representative, now enforces these transnational human rights against national states that could otherwise violate them with impunity within their own borders. Call this the Kantian-cosmopolitan interpretation of the ICC's

jurisdiction. If that is the correct way to understand the Court's jurisdiction over genocide and crimes against humanity, then that jurisdiction would certainly refute Hegel's claim that the nation-state is the absolute power on earth. On that understanding, the nation-state is a province of a cosmopolitan empire ordered to human rights, one whose satraps are overseen by officials of the empire.

However, another interpretation of the ICC's jurisdiction over mass atrocities is possible. On this view, that jurisdiction reflects the constitutionalist idea that exercisers of sovereign authority can, juristically speaking, wrong their subjects and are legally accountable for their wrongs. That idea, a latecomer to modern political philosophy, is also a latecomer to modern constitutional practice. It is embodied in the many states that, since 1945, have replaced the legislature's or the constituent assembly's sovereignty with that of an impersonal constitutional law constraining what state actors may do and providing remedies for persons wronged by them. If (as I argued in Chapter 6) the constitutionalist idea expresses a truth about the validation requirements of internal sovereignty, then it should hold for state actors even if, as it happens, no domestic process exists to hold them responsible for their domestic crimes.

How it should hold is a further question. Conceivably, other states could exercise a universal jurisdiction to enforce the idea of the constitutional state against an Eichmann or a Pinochet, but this involves a state's unilaterally setting itself up as competent to judge another even though its rulers might themselves be despots with hands just as dirty. Universal jurisdiction has the further disadvantage of having to depend either on a kidnapping in breach of international law or on the chance presence of the suspect on the prosecuting state's soil. So, an international tribunal was needed to enforce the idea of the constitutional state against criminal regimes and to cure the defect in a particular state's claiming a universal jurisdiction.

Call that the constitutionalist interpretation of the ICC. Basically, it says that rulers whose internal sovereignty is incomplete because lacking accountability to (hence endorsability by) free subjects cannot claim unqualified external sovereignty; they can rightfully demand only that foreign actors respect the grade of internal sovereignty they have. So they cannot complain if, where no justification of their conduct in terms of internal sovereignty is possible (where sovereign immunity would once have been their only refuge), an international tribunal holds them to the accountability requirement of *their own internal sovereignty* that they fail to satisfy themselves. In effect, the ICC acts on behalf, not of cosmopolitan humanity, but of the constitutional state in its perfection. Viewed that way, the ICC's jurisdiction is consistent with Hegel's claim.

The constitutionalist interpretation presupposes the perfectionist view of internal sovereignty elaborated in the previous chapter. Internal sovereignty comes in different grades depending on the quality of the validation the ruler

receives from the ruled. Recognition by a free subject confers a better authority than recognition by a serf. Recognition by a subject whose full independence the authority reciprocally recognizes in constitutional law confers the best validation and is thus internal sovereignty in its perfection and completion. The corollary in international law is that the duty of foreign actors to recognize a state's sovereignty depends on the grade of internal sovereignty it has achieved. Only state actors whose internal authority is perfect can command a respect from external actors that is unqualified. That is the meaning of Hegel's statement (quoted in the epigraph above) that a state's supposed entitlement to external recognition merely because it is a state is formal. "Whether a state is in fact something absolute depends on its ... constitution and general situation; and recognition, implying as it does an identity of form and content, is conditional on the neighbouring state's judgment and will."<sup>13</sup>

The constitutionalist interpretation both elevates and humbles the international enforcement of human rights against state actors. By rooting enforcement in the perfectionist morality of internal sovereignty, that interpretation gives the international court's jurisdiction an independent footing in practical reason – independent, that is, of empirical consent. It thus gives practical reason's endorsement to a development over which one might otherwise waver between inconclusive thoughts pro and con. Shall we have state sovereignty with impunity for mass crimes or accountability with compromises of state sovereignty? The constitutionalist interpretation dissolves the either/or, showing that accountability does not come at sovereignty's expense – that it reflects, on the contrary, the perfection of internal sovereignty, on which unqualified external sovereignty depends. That idea elevates the international enforcement of human rights in that it makes accountability an inherent requirement of internal sovereignty binding all state actors independently of their prior consent to the tribunal's jurisdiction. So, the constitutionalist interpretation explains and justifies the ICC's compulsory jurisdiction within the Westphalian framework of state sovereignty; indeed, it would even justify a compulsory obligation on all states to cooperate with the Court.

However, that interpretation also humbles what it explains. This is so because it *reduces* the international enforcement of human rights to an epiphenomenon – a secondary effect – of sovereign authority's maturation at the national level. It says that international human rights law has no autonomous existence, that it is just the constitutional law of the most advanced internal sovereignties – of those whose internal sovereignty is most complete. That understanding of the ICC assigns it its rightfully modest place. While injecting nuance into the Westphalian conception of state sovereignty (showing that the equality of sovereigns is a perfectionist goal rather than an ahistorical fact), it heads off any argument that the ICC portends the demise of state sovereignty as such. The constitutionalist interpretation thus vindicates Hegel's view that there is no authority on earth superior to the nation-state.

#### 4.2 *Expanding the Constitutionalist View*

The constitutionalist interpretation of the ICC can be expanded into an Hegelian account of international human rights law that sees its development as generally epiphenomenal to the logical evolution of internal sovereignty traced in the previous chapter. Recall the main stages of that evolution: despotic, *de jure*, legitimate, constitutional, just. Because each stage of relative authority mistakes itself for authority simply, the law governing authority at each stage is equated with the whole natural law of authority, which law forms a part of the universal law of peoples. So, a thin law of national authority is reflected in a thin *ius gentium* – one regulating the relations between sovereigns but not the relation between sovereign and subject. Here the root impediment to international law's protection of individuals is not the state's external sovereignty vis-à-vis foreign actors; it is rather the juristically untrammelled nature of internal sovereignty. The merely *de facto* or *de jure* sovereign owes no duty to its subjects that international law could recognize, let alone enforce. The individual receives no protection from international law because he is juridically defenseless in national law. Rulers are legally immune for acts of state in the law of peoples because they are legally immune in the law *for each* people.

At the stage where the model internal sovereign is a merely legitimate one, the normative situation remains basically unchanged. The legitimate ruler owes a duty to fill his laws with a content serving the interest of those with whom he covenanted, but that duty is only to promote the values of his supporters; his laws may oppress the rest. Since the covenant between ruler and ruled may have any content, since there are no legal duties apart from the covenant to bind the ruler, and since strangers to the covenant have no standing to judge whether it has been breached, there is no juristic reason (besides self-defense) to justify one sovereign's interfering with another. So again, the ruler's untrammelled internal sovereignty (where this is equated with sovereignty as such) entails its unqualified external sovereignty vis-à-vis other states. Here belongs the development-blind picture of equal and mutually independent states known as the Westphalian model. Where internal sovereignty is equated with unlimited sovereignty, all sovereigns are equal.

As we move to higher stages, however, the natural law constraining national authority thickens, and so too, therefore, does the *ius gentium*. The constitutional ruler owes a duty to serve the independence of the ruled, for only an independent subject can deliver a genuinely validating recognition. At the first stage of modern constitutionalism, independence is equated with the liberty of atomistic individuals in a state of anarchy. Accordingly, it is now understood that sovereigns have a duty going with their authority to respect their subjects' independence, and so they can wrong them by limiting their liberty excessively or by depriving them of liberty for the wrong reasons. But they cannot be called to account for their wrongs, for they are the sole judges of a breach of duty. Submitting to the subject's judgment means a regression to anarchy; submitting to a court's seems to place sovereignty in it. Hence domestic bills of rights are

merely guides for judges in interpreting statutes or, if entrenched in the constitution, are interpreted as expressions of authorial will so as to avoid the court's usurping the people's sovereignty.

The international legal situation simply reflects the domestic one. With the constitution of liberty emerges a new *ius gentium* norm acknowledging human rights against state actors, but the instruments recognizing them take the form of hortatory declarations unenforceable against internal sovereigns. This is not because states are externally sovereign in international law but because sovereigns are unaccountable according to the most advanced understanding of the natural law pertaining to their internal authority. To this context belong the Universal Declaration of Human Rights and the merely declaratory power of the International Court of Justice under the International Covenant on Civil and Political Rights. Human rights are paper tigers in international law because they are first of all paper tigers in national law.

However, *pace* Kant, the legal immunity of sovereigns is *not* inherent in their internal sovereignty. Political authority requires autonomous subjects to confirm it; and for the legislator to enlist such subjects, it must give up being judge in its own cause as to whether it has unjustifiably curtailed the subject's liberty and become partners with a constitutional court in the sovereignty of Law. Accordingly, authority's career culminates in the regime that perfects constitutionalism, where authority is recognized by a subject whose full independence the authority reciprocally recognizes through court-enforced guarantees of libertarian, egalitarian, and cultural rights. At this stage the juristic necessity for the domestic enforcement of human rights against the ruler reveals itself and with it the necessity for international enforcement where domestic means are lacking. Domestic enforcement is thus the prior necessity, international enforcement a secondary one. International law merely responds to the internal juristic reality.

We see this causal relation not only in the last-resort jurisdiction of the ICC but also in the evolving doctrines of humanitarian intervention or the "responsibility to protect." Absolute internal authority (there is no permission to resist, period) entails unqualified external sovereignty, for, absent aggression, there can be no juristic permission for one sovereign's interfering with another's unqualified authority. However, "absolute" can be understood in two different senses. It can mean legally untrammelled or legally full. Where authority is legally untrammelled, the ruler cannot wrong his subjects, who are thus at his mercy; where authority is legally full, the ruler is legally constrained such that no further constraints are needed to ensure that the ruler's authority is recognized by independent and equal subjects. In 1648, when the Peace of Westphalia was signed, absolute authority meant legally untrammelled authority.<sup>14</sup> As a consequence, every internal sovereign was conceived as a despot equal to every other, hence entitled to exclude every other from interference with its internal rule.

However, once sovereign authority is perfected in the state that perfects constitutionalism, it is understood that absolute authority is restricted to *perfect*

authorities – those recognized by subjects whose full independence is reciprocally recognized. Now rulers at pre-constitutional stages have but a relative internal authority and, correspondingly, a qualified external sovereignty. So, not all sovereigns are equal. Only sovereigns whose internal authority is perfect can have an external sovereignty that is unqualified; for what other sovereigns must recognize is just the internal sovereignty, such as it is. So, if subjects may legally resist a despot for the purpose of instituting a constitutional regime, then other states may intervene to protect them against the despot's illegal repression. If an international court may punish a criminal despot after the fact, then other states may protect his subjects during the fact. They now have a juristic reason for interfering, namely, the ruler's breach of a newly discovered norm pertaining to political authority – one protecting the subject's independence vis-à-vis its ruler.

Accordingly, the constitutionalist interpretation of international human rights law says that this law responds to the internal morality of sovereign authority as that morality develops from legal emptiness to legal fullness. It has no autonomous existence in a cosmopolitan sphere.<sup>15</sup> Therefore, if that interpretation is correct, the sea-changes in international law epitomized by the ICC herald the perfection of internal sovereignty rather than its supersession. They confirm rather than refute Hegel's thesis that the nation-state is the absolute power on earth.

## 5 A Comparative Evaluation

Which is the better understanding of the ICC's jurisdiction – the Kantian-cosmopolitan view or the Hegelian-constitutionalist one? We can do a comparative assessment by drawing out and examining the implications of each.

### 5.1 *The Social Contract Approach: A Critique*

The cosmopolitan interpretation requires the social contract theory of the international tribunal's authority adumbrated by Kant in his *Metaphysics of Morals* and elaborated by John Rawls in *The Law of Peoples*. On this theory, nothing changes in the despotic conception of internal sovereignty implied by legislative supremacy. From a national standpoint, it remains true that internal sovereigns are unaccountable for their wrongs; for, the thought is, if they were accountable to another, they would not be sovereign. What changes is the finality of internal sovereignty. According to this view, the rule of international human rights law reflects a hypothetical contract among peoples analogous to the contract among individuals establishing national authorities and setting out the basic principles of right they are duty-bound to honor and specify in law. By this second-level contract, certain states are deemed to have surrendered their legally bullet-proof internal sovereignties to the authority of a cosmopolitan right binding all states. In effect, the contracting states coerce the unwilling into an international order that a condition of rights requires. The powers of internal sovereignty are now

limited, not by the internal morality of valid authority, but by a separate law of peoples.<sup>16</sup> Let us focus on Rawls's version of the contract, for it is the most developed.

Rawls adheres to Kant's prescription for progressively wider alliances approximating but not achieving a world state. This he calls a realistic utopia, for it takes people as they are and prescribes only workable arrangements.<sup>17</sup> Thus Rawls's law of peoples is in the first instance the set of principles that all liberal constitutional democracies would accept as a just framework for their interactions if they were ignorant of differences in their size, natural resources, stage of economic development, and so forth. All such peoples would agree, *inter alia*, that states must respect each other's independence, observe treaties, and honor human rights. In a realistic utopia, however, agreement on a law of peoples will extend to some non-liberal societies, and the question for Rawls is how far liberal societies can tolerate non-liberal ones as equal members of the society of peoples. In this way (as Rawls admits), the content of what purports to be international justice is thoroughly enmeshed in what liberal societies can accede to as a matter of their foreign policy.

Rawls's answer to the question he poses is that liberal societies can tolerate illiberal but decent societies because these societies will agree to the same principles of international law agreed to by liberal societies amongst themselves. Societies are illiberal if they are hierarchical, recognizing no principle of equal citizenship, and if they order their constitutions to a particular comprehensive view of the good life. Still, illiberal societies are decent if they respect a basic minimum of human rights, give constitutional protection to cultural minorities, accord consultative rights for all major groups in society, and recognize rights of dissent. Such societies have internal reasons for accepting international law principles of non-interference, treaty observance, and respect for human rights, and so liberal societies can form a political association with them.

Excluded from that association, however, are states that habitually disregard human rights (outlaw states) and autocratic states that happen to respect human rights (benevolent absolutisms), for there is nothing in the nature of these regimes that would lead them to accept the binding force of the principles comprising a law of peoples. Nevertheless, says Rawls, they are universally binding.<sup>18</sup> The human rights to which all decent societies would agree are enforceable against non-decent societies because liberal and other decent societies are precluded by their natures from tolerating conduct that violates the content of human rights that all minimally decent societies would accept. Observe, however, that this justification of compulsory jurisdiction reduces law-enforcement to diplomacy by other means. Applying the so-called law of peoples to non-decent societies is really just executing the parochial foreign policy of decent societies.

The human rights that form part of the law of peoples form a subset of the rights that liberal constitutional democracies protect at home. They constitute, says Rawls, "a special class of urgent rights, such as freedom from slavery and

serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide.”<sup>19</sup> These are the rights that both liberal and decent hierarchical societies can agree on as being inviolate by state actors in any society. They thus form a kind of Noachide code for the modern world. Fulfillment of these rights by a state is sufficient to rule out the permissibility of any kind of interference in its domestic affairs. A violation of these rights is sufficient to justify condemnation and, in extreme cases, forceful intervention.

Rawls’s derivation of a law of peoples from a hypothetical contract concluded behind a veil of ignorance modeling a fair procedure can be taken as an account of the ICC’s compulsory jurisdiction. One advantage of this account is that, by generating a Noachide code for liberal and decent hierarchical societies, it explains the limitation of the ICC’s human rights jurisdiction to crimes amounting to mass atrocities. Of all the criminal wrongs that state actors can commit against those subject to their authority, only crimes against whole populations fall within the ICC’s jurisdiction; and it is a virtue of Rawls’s theory that it can account for this limitation.

The downside, however, is that societies that fail to meet the decency bar are given no reason for accepting the law of peoples, which is nonetheless said to be binding on them. Indeed, they are excluded from the society of peoples, whose law is thus unilaterally applied to them – a stunning departure from justice as fairness. Moreover, Rawls’s decency bar is high enough to exclude many current members of the United Nations, including Iran, Egypt, and North Korea, for it requires protection of minority rights, consultative rights for all major groups in society, and recognition for rights of conscience. Finally, if non-decent societies cannot be parties to the social contract, then “punishing” their officials for crimes against humanity is, as was said, really executing by force the foreign policy of decent societies. But then it will involve the retroactive application of a foreign law to officials who committed their crimes pursuant to domestic law. It would thus violate the principle of legality that all decent societies accept.

By contrast, the constitutionalist interpretation excludes no state actor from notional assent to the law applied to him. It has no need of a Noachide code acceptable to some but not all peoples, because it has no need of a hypothetical contract to which only decent peoples could assent. *All* who claim sovereign authority are *a priori* answerable to its full internal morality, and so no state, however barbaric, is subject to an external law. On this account, therefore, the law of peoples respecting the limits of internal authority is a genuinely universal law.

### 5.2 *Can the Constitutionalist View Generate the Appropriate Jurisdictional Limitations?*

Still, it might be thought that the great virtue of the constitutionalist interpretation is also a fatal weakness; for without the idea of a Noachide code, how can



the constitutionalist interpretation generate the restrictions on the ICC's jurisdiction contained in the Rome Statute and that seem appropriate to an international tribunal? It would seem that the constitutionalist view must extend the ICC's jurisdiction to any coercive act of an official lacking justification by constitutionally tested legal authority where no prospect of domestic accountability exists. So, even an arrest without probable cause would seem to qualify. From the constitutionalist standpoint, the limitation of the ICC's jurisdiction to so-called international crimes seems incoherent, but this only makes its point of view seem eccentric.

However, the constitutionalist interpretation can indeed make sense of the ICC's limited jurisdiction. In particular, it can account for a human rights jurisdiction limited to crimes against humanity and genocide. The Rome Statute defines crimes against humanity by a set of three limitations. First, only a short list of crimes (such as murder, mass extermination, enslavement, rape, torture, apartheid) qualifies. Second, a crime on this list is a crime against humanity only if committed as part of a widespread or systematic attack on a civilian population. So there must be multiple acts, a course of conduct. Third, even these are crimes against humanity only if committed "pursuant to a state or organizational policy." The crime of genocide is separate from crimes against humanity, which are crimes against individual members of a population. It consists of actions destructive of an ethnic, religious, or racial entity with intent to destroy. Let us see how well the restrictions on jurisdiction generated by the constitutionalist interpretation match up with the Statute's.

For the constitutionalist view, the ICC's jurisdiction takes hold at the final stage of internal sovereignty's development toward completion, where constitutional limits on valid public authority are enforceable by a court. Its jurisdiction is in that sense relative, and the object of its relative jurisdiction is crimes hitherto sheltered under sovereign authority – under the idea that the internal sovereign cannot do injustice or, if it can, is inherently unaccountable for injustice. Until now, the bar to international criminal jurisdiction has not been *justification* of the impugned conduct by sovereign authority but sovereign *immunity*. Therefore, the relative jurisdiction logically covers only those wrongs that cannot be defended otherwise than by a claim of sovereign immunity – that cannot, in other words, be justified.

Accordingly, it is not enough that an official commit an act which, while *prima facie* wrong, *can* be justified by legal authority (an arrest, say), but was unjustified in this case (he arrested without probable cause), and there is no prospect for domestic accountability. In that case the issue is whether this *prima facie* wrong action was or was not justified in the circumstances by constitutional authority, and that is a matter for the ordinary criminal law. It is for a domestic court alone to judge whether the action can be subsumed to the public justification for the official's use of force – let us say, the need to actualize the sovereign's monopoly of coercion. To hold otherwise – to say that a foreign tribunal may judge an official's claim of justified force on the

merits – is to state a maxim incompatible with the internal sovereignty of states even if no process for official accounting exists. This is so because it belongs to the internal sovereign to *apply* its sovereignty to particular cases, and so if no means for asserting sovereignty over wayward officials exist, this is a weakness of internal sovereignty for the internal sovereign to cure. Here an international tribunal's intervention would usurp the domestic government's exclusive authority to apply the sovereignty in whose name it acts.

Different is the case where an *unjustifiable* wrong seeks refuge under the claim that those exercising sovereignty cannot do injustice or are inherently unaccountable for injustices. Here either a domestic or an international court may take jurisdiction – a domestic court because authority's internal morality says that there is no such refuge, an international court because rulers invoking nothing but their majesties are the proper subjects of international law. The domestic court takes priority, however, because the international jurisdiction reflects the self-limitation of internal sovereignty rather than its surrender. All this, as we saw, fits the positive law. The Rome Statute gives the ICC a complementary jurisdiction over the crimes it selects for last-resort international jurisdiction.

If the proper object of international criminal jurisdiction is the set of crimes for which sovereign immunity is the only conceivable defense, then to define the jurisdiction one would first ask what wrongs can never be justified such that only sovereignty could conceivably shelter them. That would give us the Rome Statute's short list of crimes that can be crimes against humanity. Some wrongs – murder, rape – can never be justified because they contain absence of justification in their definitions. Others – mass extermination, mass deportation, apartheid, genocide – can never be justified because there are no circumstances that could justify them. So, what is the legally relevant category to which the crimes on the Rome Statute's short list belong? Is it, as the statute's framers believed, the most serious crimes of concern to the international community as a whole? No. Is it, as Rawls thought, wrongs that even non-liberal but decent peoples would recognize? No. It is wrongs impossible to justify.

Secondly, having settled on a list of wrongs that can never be justified, one would then require that the unjustifiable wrongs be putative acts of sovereignty or acts of state, for to these alone would the old doctrine of sovereign immunity have applied. But acts of state are acts done pursuant to a reason of state or to a general policy, and so we arrive at the limitation that the unjustifiable wrongs be committed pursuant to a state policy or to a policy of an organization seeking sovereignty and justifying its actions by the supposed justness of its claim to sovereignty. Third, a wrong impossible to justify that serves a general policy or reason of state must, by virtue of its generality, implicate a multitude rather than a singular; and so we derive a requirement that the crime potentially be part of a widespread or systematic attack on a civilian population. This is not an exact fit with the Rome Statute, but it is close enough and conforms to what a

reasonable international jurisdiction would be. So we arrive at a suitably limited international criminal jurisdiction without recourse to the idea of a contract among members of an exclusive club of decent societies to accept a modern version of a Noachide code and impose it on non-decent societies.

In a nutshell: The constitutionalist interpretation of the ICC's human rights jurisdiction that supports Hegel's claim for the nation-state's finality is superior to the contractarian one that contradicts the claim; for, without implying an intrusive jurisdiction over all domestic wrongs by officials, that interpretation construes international human rights law as a law of all peoples rather than as the foreign policy of a particular alliance.

### 5.3 *On Retroactivity and Humanitarian Intervention*

The constitutionalist interpretation also avoids the retroactive punishment into which Rawls's contractarian account falls. Here allow me to paraphrase a previous formulation of the argument denying the retroactivity of punishment for atrocities authorized by domestic law.<sup>20</sup>

An official who commits genocide or mass murder under the law of a merely *de jure* or legitimate authority (so an official of a "non-decent" society, in Rawls's terms) executes law and conforms to the obligation relative to that type of authority. Still, if he is later convicted under the law of the exemplary constitutional state, he cannot complain of punishment under a retroactive law; for the obligation of obedience he invokes in his defense existed only by virtue of his regime's participation in the ideal form of authority, whose perfect embodiment is constitutional rule under a public reason all free agents can accept. The ideal form of authority is thus already implicit in the particle of authority that a merely *de jure* or legitimate regime can claim and upon which the defendant relies; it is not an external, *ex post facto* imposition. Since, moreover, there is a logical continuum (discussed in Chapter 6) connecting the authority the defendant obeyed and the authority that convicts him, he cannot complain of unfair surprise; the reasonable agent in his shoes knows the connection. Accordingly, the defendant cannot invoke his regime's authority in defense without summoning against himself the authority of the best constitutional regime under which he is punished.

Finally, the constitutionalist interpretation justifies foreign intervention to protect civilian populations in terms that all peoples can accept rather than in terms of the overlapping public cultures of the intervening states; hence it can distinguish such intervention from aggression. As we saw, where internal sovereignty is thought to be legally unlimited, external sovereignty will likewise seem unqualified, for there will be no juristic reason to justify an interference. That was the situation in 1648. However, once we see that all stages of authority prior to the last produce only a relative authority, we must revise our conception of external sovereignty as well; for external sovereignty, as the negative (exclusory) side of internal sovereignty, cannot be stronger than internal sovereignty. So, if at a certain grade of relative authority, subjects have a

permission to resist for the purpose of instituting a higher grade, then third parties have a permission (though not an obligation) to help them achieve that purpose, or at least to protect them from the ruler's attempts to crush their resistance; for those attempts are unlawful in the measure that the resistance is lawful. Further, once we know that a sovereign's respect for human rights is a condition of his absolute authority, we also know that third parties have a legal permission to protect the inhabitants of foreign countries against their ruler's unjustifiable violence where no domestic means of protection exists. The idea is not that they have a legal *duty* to intervene in order to realize cosmopolitan human rights. It is rather that there is no legal impediment to third parties' performing an obligation springing from humanitarian morality (so no juristic cost to discharging a moral duty to rescue). Only a state whose internal authority is absolute can have an external sovereignty that is absolute, and only just states have an internal authority that is absolute.

## 6 Conclusion

The upshot is that only in a world where all internal relations between sovereign and subject conform to the Ethical Idea's form of mutual recognition can we speak of external relations between absolutely sovereign and equal states. The Westphalian system is thus a distant goal, not an existing fact. Such autonomously unified states would have no need of external enemies to unify them, and so a condition of amity would prevail without the dystopia of a world state.<sup>21</sup> Perhaps we could even call this perpetual peace. Assuredly, one way to achieve such a peace is to abolish the "other" in a union of states, but that is not the only way. Another is to preserve the other while abolishing the other as enemy. A society of sovereign states is necessarily a state of incipient war only if the other must be an incipient enemy. But the other must be an incipient enemy only for regimes that require the other to be an enemy for the purpose of bonding subjects to their sovereign, that must assume that others perceive them under the same need, and that must therefore interact on the basis of distrust. Such are pre-constitutional and *bourgeois* constitutional regimes, which, except during war, rule externally over passive subjects. Where, however, authority is endorsed by active citizens whose civic-mindedness is nurtured by an acknowledged duty on authority to respect and promote all dimensions of their independence, enemies are no longer required for internal sovereignty. We can thus realistically expect that an international society of perfect sovereigns would abolish the state of incipient war just as effectively as would a world state.

Which of these paths toward perpetual peace is more consistent with the story of freedom told by Hegel's philosophy of history? The answer seems clear. The first path ends in peace without the self-determination of states that, but for their lack of self-determination, would fulfill the self-determination of their citizens. The second ends in peace with self-determination. It is thus the reconciling

middle for the dichotomy between global unity (peace without sovereignty) and distrustful nationalism (sovereignty without peace) that Hegel left standing in the *Philosophy of Right*. The first path leads to humanity's imperial sovereignty over the culturally diverse nations of the earth. The second leads to the Ethical Idea's passive sovereignty autonomously reflected in a plurality of independent states. Above these states would lie, not a coercive sovereign remote from the individual, but the intellectual idea of an ethical life that, with the philosophy of Spirit's timely intervention, all states could come to reflect.

## Notes

- 1 PR, para. 333.
- 2 TPP, 8:356–8:357; MM, 6:350–6:351.
- 3 PR, para. 324A.
- 4 PR, para. 324. For insightful commentary on Hegel's remarks on war, see Shlomo Avineri, "The Problem of War in Hegel's Thought," *Journal of the History of Ideas*, Vol. 22, No. 4. (1961), 463–74.
- 5 PR, paras. 333–4, 338. So E. H. Carr was inexact in saying that Hegel gives finished expression to the view that ethical standards are inapplicable to the relation between states; see *The Twenty Years Crisis*, 1919–39, p. 153. They are applicable in principle but subjective in application.
- 6 MM, 6:344. I can find no textual support for Williams's claim that Hegel saw the necessary absence of a world sovereign as making world history "fundamentally tragic." *Hegel's Ethics of Recognition*, pp. 335, 357, 363. PR, para. 360 contradicts that claim, while the "divine tragedy" in LNR, § 164 (on which Williams relies) refers to vanguard but transient states bearing a particular phase of Spirit's development, not to the State as self-realized Spirit.
- 7 I take it to be obvious that the United Nations does not contradict Hegel's nation-state thesis, given the non-binding character of General Assembly resolutions and the veto exercised on collective action by each permanent member of the Security Council. Nor do the institutions (e.g. World Trade Organization, International Monetary Fund, World Bank) making up what is called globalization, all of which are treaty based and so depend on revocable consent. Nor, finally, do international human rights courts other than the ICC, none of which have a compulsory jurisdiction.
- 8 At the time of writing, the EU's stability is far from assured. But the argument proceeds on the assumption least favorable to Hegel – that the EU is here to stay.
- 9 To the extent that EU policies work to obliterate national cultures in a homogeneous state of free and equal agents, they inflame subordinate solidarity interests integral to the constitutional state into ethno-cultural chauvinisms subversive of it.
- 10 See Stephen Neff, *Justice Among Nations*, pp. 474–8.
- 11 TPP, p. 367; MM, p. 350.
- 12 PR, para. 333.
- 13 PR, para. 331.
- 14 Grotius defines sovereign power as power "whose actions are not subject to the control of any other ... so as to be annulled by the pleasure of any other will." See *On the Law of War and Peace*, I, 3, para. 7.

- 15 *Contra* Rawls, who makes international protection of human rights the subject of a separate social contract among liberal and non-liberal but decent peoples; *The Law of Peoples*, pp. 32–34, 37, 86.
- 16 Rawls, *The Law of Peoples*, pp. 26–27.
- 17 *Ibid.*, pp. 12–13.
- 18 *Ibid.*, pp. 80–81.
- 19 *Ibid.*, p. 79.
- 20 A. Brudner, *Constitutional Goods*, p. 434.
- 21 Smith, *Hegel's Critique of Liberalism*, p. 164; cf. Avineri, *Hegel's Theory of the Modern State*, p. 207.

## Conclusion

After reading an outline of this book, a colleague wrote to me saying: “There will be people who will read this book and say (and who can blame them?): ‘Hegel is a madman and you are the madman’s apprentice.’ It’s not just megalomania; it is Hegel declaring himself to be God! And maybe he just did consider himself to be the incarnation of divine knowledge and the vehicle of a divine intervention in history.” And here I’ll complete the thought: There are thousands of such people in asylums.

This is not an uncommon reaction to Hegel’s body of work, particularly among Christian theologians and those for whom the divinity conceived by Plato and Aristotle is the true one.<sup>1</sup> Indeed, it explains why so many of Hegel’s sympathetic interpreters – those who find value in his social ethics, his civic conception of freedom, or in the idea of mutual recognition as the general form of juridical relations – have either denied or sidelined his theism, arguing that it is separable from what is enduringly valuable in his thought. This book, by contrast, has faced squarely the seemingly bizarre claims encapsulated in my colleague’s reaction and tried to show why a critical mind must take them seriously. In this short conclusion, I’ll respond directly to the concerns raised by these claims and suggest that the Hegel whom interpreters would separate from his theism is the real madman.

The misgivings voiced by my colleague can be heard in one of three ways. On one understanding, it presupposes faith-based theism, for which God’s transcendence of humanity equates to His supernatural remoteness from humanity. The God of faith is outside Nature and therefore incommensurably beyond the potentialities and faculties of human nature. A God transcendent in this sense can have no direct connection with a natural human being. He cannot be known by human minds except through the words by which He has chosen to reveal Himself through an intermediary; and He cannot communicate through a human intermediary except insofar as the mediator has been inexplicably

anointed by Him against nature's candidate, or has issued from a supernatural birth, or has been miraculously transformed from a natural individual into a supernatural messenger. From all except the divinely appointed singular (who is himself incommensurably other) God withdraws; for any connection with a natural human being is incompatible with His supernatural otherness and so (since the divinity is indestructible) must destroy the human being.<sup>2</sup> If that is how we understand divine transcendence, then Hegel's claim to be the medium of a divine self-knowledge and of a divine incursion into time is indeed hubristic to the point of madness; for how can a human who is alive in a natural body connect with a deity who shuns contact with natural bodies and survive?

On another understanding of my colleague's worry, it has in mind the philosophical theism of the pagan philosophers. For Plato and Aristotle, the unity of the divine and human minds is an excellence to be yearned for, aimed at, approximated, perhaps even attained in ecstatic moments; but it can never be attained as a settled state because the settled state of a human being includes a body, while that of the divine being does not. God is pure mind, man a mixture of mind and body. Because pure mind is unalloyed being, man the mixture is unalterably inferior to God. On this view, Hegel's hubris consists in his denying the hierarchy of the human and divine natures – in his insubordinately “abolishing the humanity of man” and “transforming man into God,” as Eric Voegelin puts it.<sup>3</sup> More specifically, it consists in his apparent obliviousness to the body's impediment to the union of the divine and human minds and in his absurdly claiming the divine wisdom that Plato and Aristotle reasonably only longed for.

The third way to interpret my colleague's concern focuses on his words, “It is Hegel declaring himself to be God.” On this reading, Hegel's hubris consists not so much in his claiming that a human being can be the medium of a divine self-knowledge and incursion into time – after all, the Abrahamic religions say this as well – but in his unilaterally declaring himself to be that human being. We would not take seriously someone who raved in a public square that he is the second coming of Christ and that the kingdom of God is nigh. Why then should we take Hegel seriously? Does not self-appointment to the role of God's medium dissolve divine transcendence into the subjectivity of every crackpot Messiah?<sup>4</sup> I'll try to answer these concerns in the order in which I have presented them.

The conception of divine transcendence as supernatural incommensurateness with humanity is not taken seriously even by its adherents. The Abrahamic religions all compromise that conception in the various ways in which they imagine God, interpret His word, and even represent His sovereignty, though without giving it up, for it is what defines faith as a distinctive presentation of the comprehensive truth. Indeed, one may doubt whether incommensurateness is even a coherent conception of transcendence. This is so because incommensurateness with humanity is abstraction away from (or repulsion of) humanity, and “abstraction away from” is not transcendence; it is dependence on a prior human belief in the fixity of that from which abstraction is away. In the



*Phenomenology*, Hegel understands a supernatural deity as a human projection relative to a belief in the fixed reality of the isolated individual, with whom humanity is identified and with whose contingency and idiosyncrasy the divine is of course incompatible. This belief is in turn relative to the foreignness of a given world not yet humanly transformed by purposive work or transformed in a way that obscures the purposiveness behind the work, making the product appear as an independent object. Of course, a transcendence constituted by reflex from the solitary individual is no transcendence at all; it is a *faux* transcendence in the grip of the solitary individual.

It does not follow, however, that there is no genuine sense of transcendence. Ludwig Feuerbach and Karl Marx accepted Hegel's critique of the distant God as a human projection premised on atomistic individualism and relative to an estranged social world. But then, equating transcendence with the pseudo-transcendence of the supernatural, they went all the way from a rejection of the distant God to a rejection of transcendence as such – to what might be called absolute humanism. It was just their own species essence, they said, before which atomistic individuals were abasing themselves in religion. Let them freely acknowledge that essence as active members of a human community and theism will wither away. That was a non-sequitur. From the fact that transcendence-as-supernaturalism is a human projection it does not follow that transcendence as such is. Though transcendence-as-supernaturalism assumes the fixed reality of the isolated ego (twisting a historically relative condition into a truth of nature), there might be a conception of transcendence that is valid even for a civic theory of human potentiality. Such a conception would be the mean between the distant God of religious faith and the death of God in absolute humanism.

Hegel finds the mean. For him, God's transcendence of humanity cannot mean His supernatural remoteness from humanity, for a supernatural God is a humanly determined god – an idol, therefore. Rather, it means simply His *distinction* from humanity. The human being is limited by another; the divine being is not.<sup>5</sup> Not only is the human *individual* limited by another; collective humanity is as well. Whereas collective humanity on its own finds a pre-given, atomistic individual whose separateness it can subjugate but not overreach, divine Spirit logically embraces the difference between a collective mind and a separate individual mind by virtue of collective mind's inadequacy to its own implicit unity of differences. Collective mind lacks the recognition of a separate mind to be actually the dialogical unity it inherently is; and the separate mind it lacks therefore lacks the collective mind as the ground of its rational necessity. But mutual lack implies the nexus of mutual complementarity. Divine Spirit is the union-in-alterity of collective and separate minds that for humanity alone are merely juxtaposed.

A divine transcendence based on the difference between a boundless being and a bounded being is not the reflexive "transcendence" of the supernatural, yet it is transcendence. A Whole that embraces what no unaided human self-consciousness can is radically different from human self-consciousness and in

that sense transcendent thereof. So there is a conception of transcendence as difference that is not implicated by the critique of supernaturalism and that does not equate to remoteness, for the idea of a nexus between self-inadequate but complementary alterities is comprehensible to us. *Contra* Feuerbach and Marx, it is not the human spirit that is being projected away in faith-based religion. It is the divine Spirit itself.

A divine transcendence conceived as simple distinction from humanity is not closed to relationship with humanity. Faith-based theism tacitly affirms such a relationship in the connection between God and the religious community that symbolizes Him, interpretively extends His revelation, and makes faith essential to the redemptive power of external events and objects. But in faith-based theism this affirmation stands in embarrassing tension with its incommensurateness thesis – a tension exposing faith-based theism to the psychological or sociological reductionism that knows how to exploit it. With transcendence-as-difference there is no need of equivocation. Of a divinity that is simply distinguished from bounded humanity one can say, with religion, that it is incomparably infinite, but without having to say that it excludes humanity's autonomous cooperation in the establishment and demonstration of the divinity's sovereignty. Unlike incommensurateness, difference does not rule out partnership, not even equal partnership, with the other; on the contrary, it makes partnership possible, for only different persons can be partners. Moreover, if, by a necessity of its own inherent boundlessness, the divinity *requires* a partnership with a human other so as to see its internal law of complementary alterities independently confirmed as the law also of Nature, then it does not contradict its transcendence for a human being such as Hegel independently to claim partnership, provided he manifests the qualities of mind and character God's unchosen philosopher must possess. I'll return to this.

What Hegel can say to the believer's accusation of hubris contains all that is needed for his response to the same accusation by the pagan philosopher or his contemporary followers. For Aristotle, the difference between God and humanity equates to a chasm between a pure intellect and a composite of intellect and body. Therefore to think God's thoughts, the human philosopher must become – fleetingly – “more than human.”<sup>6</sup> Because humanity denotes a status midway between the animal and the divine, its characteristic natural drive (unconscious and misdirected in all but the philosopher) is *unfulfillable* longing for divinity.

For Hegel, by contrast, the difference between God and humanity equates to a difference between a union of separate minds in a self-sufficient Whole, on the one hand, and a juxtaposition of separate minds vulnerable to each other's freedom, on the other. On this axis, the difference between God and humanity cannot be a chasm, for a boundless union of alterities alongside a juxtaposition of alterities is once again bounded, hence self-contradictory. Nor, paradoxically, does this difference imply a hierarchy between God and humanity. On the contrary, Hegel's conception of God's difference from humanity entails the

potential equality of God and the human individual projected by Christianity in disagreement with pagan philosophy. This is so for the following reasons.

As a being limited both by matter and by composite humanity, Aristotle's god is, in Hegel's view (which is also the Abrahamic view), not God. Nor is a god who, like Schelling's "Absolute," unilaterally subsumes the world of juxtaposed sides to its union of complements, for unilateralism leaves a trace of what was subsumed. A boundless God can co-exist with a world only if He created the world from nothing and now fills it. But if He is also a God proportionate to human reason (not a supernatural projection), then His creation of the world must be an idea of reason rather than an incomprehensible event; and so He must have logically unfolded the world from an intelligible necessity of His nature, yet without thereby detracting from His self-sufficiency alone. Hegel's reconciliation of these ideas is extremely dense, but perhaps it can be understood in the following way.<sup>7</sup>

God as the worldless Idea of an Absolute contains the difference between separate minds in one sense but not in another. It contains the individual mind separate from the collective mind and recognizing the Whole wherein both are contained as subordinate moments; but it does not contain the individual mind separated from the Whole's priority and claiming reality in its isolated immediacy. The Whole cannot be said to lack its own negation, and so its not containing separation in the latter sense does not detract from its self-sufficiency or absoluteness. But neither can the Whole as Idea be said unequivocally to contain the separate mind or to have acknowledged it in the fullest sense. So, while self-sufficient, it is also truncated. It contains an undeveloped possibility. Accordingly, to have become fully the union of separate minds that it both is and is not in the untroubled harmony of the worldless Idea (to have radicalized its acknowledgment of the separate individual mind), the Idea must have (an idea of reason) freely released its separate individual from the Idea's priority ("created" Nature); and it must have ceded this individual room independently to attest (for even its atomistic existence is now embedded in a relationship) that its selfish satisfaction lies within wholes evincing the Idea's union of complementary alterities, leaving the Idea with no other in which its law is not spontaneously reflected. In other words, God as Idea (the best idea of the Absolute) contains the necessity for a transition (which is not a supersession by a better idea) into God as Spirit—the union-in-alterity of the Idea and Nature.

Now, Hegel the man is just Nature's free witness become self-conscious. In his philosophy of pre-intelligent nature, he exhibits relationships discovered by natural science as not-reflections of the Idea, that is, as obscure anticipations of rational complementarity in the mechanistic forces linking particles and bodies and in the structure, reproduction, and interdependence of living organisms. In his philosophy of intelligent nature, he explains relationships from the standpoint of the self-aggrandizing aims of atomistic self-consciousness while simultaneously unveiling their latent structures of mutual recognition for the Idea to "see." In thus hovering between immanent and transcendent standpoints, he

gives the Idea its extreme other's auto-confirmation that the Idea rules nature, human psychology, and human society, thereby performing an essential role in God's realized divinity. So, it is by virtue of what the divine nature requires to enlarge its unity to the full reach of its potential that a natural human being can participate equally in divinity while remaining human.<sup>8</sup> Because God must allow full scope to a separate individuality He already partly acknowledges *qua* Idea so as to develop to the full His potential for totality, humans can enjoy a portion of God's divinity while remaining distinct from God as pure Idea. But since God provides the seat for a man, offering him an equal partnership in divinity, there is nothing inherently hubristic about a man's accepting the offer and occupying the seat.

A man could, however, occupy the seat in a hubristic manner. This he could do by failing to display in his testament the humility, self-discipline, and self-forgetfulness demanded of someone who would credibly fill the sublime office of God's philosopher. He would not fail in this respect simply by occupying the seat on his own initiative rather than, like the prophets of the Abrahamic imagination, answering an appointment from on high; for if divine transcendence means divine difference (not incommensurateness), and if God's specific difference is boundlessness (not incorporeality), then the man's own initiative is exactly what God requires. Appointing a favorite to confirm His sovereignty would hardly suffice. But a man claiming to be God's philosopher would fail to display appropriate humility (and so corrupt the office) if he indulged in self-display – if he injected into “science” his personal beliefs and feelings, representing his subjective thoughts as the objective thoughts of God and as being capable of grasping nature, history, and human society *sub species aeternitatus* – as they objectively and truly are. And so now we come to the third-mentioned rendering of my colleague's worry: Hegel's supposed unilateral declaration that his thoughts are God's thoughts and that his intervention in civil society's evolution is God's incursion into time.

The response to this concern is that Hegel could not have done more to avoid unilateralism. As a logician, first of all, he effaces his personal mind in the necessary thoughts of an objective mind and invites all intelligent beings to confirm or disconfirm that the thoughts he thinks are indeed those of a universal mind and not solely his own.<sup>9</sup> The avoidance of unilateralism is just the point of the *Science of Logic's* extreme austerity and rigor – of its author's aversion to extra-systematic introductions, his determination to avoid presupposition, his insistence that the truth about absolute being must take the form of a circular system whose beginning is validated at the end as no beginning but result, his surrender to the lawful movement of conceptions of the Absolute in accordance with the three-step method of analytical separation, dialectical negation, and speculative synthesis – and so forth. Perhaps he fails in all this. Perhaps there is a leap somewhere, an unconscious assumption, an intruding prejudice. But then the critic my colleague warned against must show how and where he fails instead of

accusing him of arbitrarily elevating himself to divinity merely by undertaking the task.

As a philosopher of nature, history, civil society, and the state, secondly, Hegel does everything within the limited power of a thinker to avoid unilateralism so as to produce a genuine science of these objects. Hence the systematic sequence of thoughts laid out in the numbered paragraphs of the *Encyclopaedia* and *Philosophy of Right* – a contrast to the polemical style of Marx and the aphoristic style of Nietzsche. Hence, too, Hegel's saying in the *Phenomenology* that the philosopher must give himself over to the independent life of the object rather than impose an interpretation, must observe natural consciousness's self-criticism rather than judge it from his own standpoint, and must see his own idea produced at the end of this process rather than shoot it "from a pistol" at the beginning.<sup>10</sup> Finally, the avoidance of unilateralism is the point of Hegel's "*Hic Rhodus, hic saltus*" – of his submission to what is for an independent confirmation of his claim that what is, is reasonable.<sup>11</sup>

We have seen, however, that the confirmation fell short and that Hegel was forced into unilateralism by historical circumstances. Did he therefore become presumptuous by force of circumstance – exposed as another false prophet? That would have been so had he persisted in claiming that his political philosophy was political science despite the discrepancy between the Ethical Idea and the existing state-type and so despite the absence of the historical preconditions for the reconciliation of faith and reason in worldly kingdoms of the Ethical Idea. But we saw that he did not. In the last cycle of his Berlin lectures on the Philosophy of Religion, he withdrew his claims to reflecting God's self-conscious sovereignty, becoming once more someone who humbly awaits the world in which that consummation would be possible.

So the accusation of hubris is unfair to Hegel's philosophical theology however one construes it. So too, therefore, is the accusation of madness or sorcery that goes with it. The cardinal difference between Hegel and the charlatan who calls himself the Messiah and enchants credulous minds into following him is *The Encyclopaedia of the Philosophical Sciences* together with its openness to falsification by critical minds applying (as this critique has done) truth conditions it recognizes and submits to. But now I'll conclude with the thought that the philosopher we would be left with were we to remove Hegel's social ethics from under its theological arch would be the real perpetrator of an insane hubris.

That philosopher would be the progenitor either of the humanist despotisms of the twentieth century or the theistic ones of the twenty-first depending on which fragment of Hegel's Whole he chose to absolutize. Accentuate the social ethics and Hegel's absolute idealism becomes the absolute humanism of his early Jena period, which can take either nationalist or cosmopolitan forms. This is so because, if one removes Hegel's social ethics from the primacy of divine Spirit, one is left with objective mind – the public world governed by human intelligence – absolutized. For objective mind absolutized, liberal civil

society (in which the system of needs is left free of direct control by intelligence) is the transient dichotomy of state and market built on the historically naive naturalization of the atomistic ego, to which the artificial state is servant. That civil society disappears in the end-state of the political community, within which the individual ego comes to its rational importance as one whose practical devotion to fatherland or contribution to human productive activity brings the community to life. Like the ancient *polis*, however, this community sits on nature's atomicity – objective mind's other. Without Spirit, this other is an externally given, unconnected other. Therefore, to absolutize objective mind is to annul (treat as nothing) this other, which is to annul the separate individual – the individual distinct from the collective unit – whether in the *Volk*-state or the universal community of producers. To annul the separate individual is to deny the existence of constitutional constraints on what the collective unit may do to demonstrate the nothingness of its other and therewith to affirm its own ontological primacy. Absolute humanism paves the legal road to Auschwitz and the Gulag.

Alternatively, one might absolutize a divine transcendence abstracted from the system of its publicly verifiable manifestations in autonomous nature, history, law, and civil society. Thus severed from immanence in human agency and insight, God becomes once more the supernatural object of subjective faith and feeling. Yet this is not the faith-based theism of the medieval and Renaissance eras that had not yet seen modernity's developed implications and that succumbed to an Enlightenment critique it could not answer. It is a rejuvenated theism risen from the ashes of the two atheistic empires this theism sees as the culmination of Enlightenment and in whose downfall it sees its own vindication. Equating modernity with the death of God in absolute humanism, emboldened theism rejects modernity *tout court* along with all the manifestations of divine reason in modernity's evolving constitutional state. So it is anti-modern rather than pre-modern, and, of course, myopically so. Seeing nothing in post-Enlightenment history but the defeated hubris of humanity, resurgent Islam now stands over against a human society it regards as godless – satanic. But an infinite God cannot tolerate a society not ordered to God, and a theism divorced from the system of Spirit's manifestations in civil society is unaware that human society is *already* so ordered through freedom. Here, then, to actualize God's sovereignty is to overthrow all the institutional signs and supports thereof and to replace them with a clerical despotism and tyranny of the faithful. And it is unilaterally to invoke God's approval for every outrage committed in defiance of the human rights God's perfect sovereignty requires. But for men to wipe out centuries of objective progress toward God's sovereignty while subjectively claiming to actualize it is, if anything is, a mad act of hubris.

Between these polar abstractions lies the slowly gestating realm of the Ethical Idea in liberal constitutional states. In these polities, human intelligence modestly admits its limitation by nature, which it harnesses and regulates but does not annul, while co-existing with faith-based theism, which relates to the Spirit

that is boundless but does not see the earthly state as its potential realization. Both affirm humanity's finitude, and so both regard perfect justice as belonging to a Whole unique to a divinity incommensurate with humanity, whether understood in Abrahamic or philosophic terms. Hence both reject humanist political utopias, whether of the left or the right, while falsely equating the realization of the rational with humanist political utopias.

Nevertheless, the co-existence of secularism and religion is tense. Equating theism with faith-based theism, the liberal state banishes theism as such from the public sphere at the price of lowering (relative to pre-modern eras) the ends of the state. It does so in the name of rule in accordance with principles capable of a public justification and around which a consensus overlapping positions on the most important matters can form.<sup>12</sup> It does not know of the possibility of a public justification of theism. It therefore excludes theism from the public sphere on the basis of a false equation of theism with faith-based theism. This exclusion of theism undercuts the publicness of the constitutional state and diverts (at bottom) publicly cognizable yearnings into non-rational outlets that are not publicly cognizable, yet that inevitably (for they are inherently rational) seek political expression. These forces would elevate the ends of the state at the price of sectarianism.

Theoretically speaking, Hegel's public justification of theism is the reconciling middle for the extremes of low-level consensus and sectarian loftiness at war within liberal civil societies and internationally. As such, it is the possibility condition for the mutually supportive relationship between the state and religion that Hegel sketches in paragraph 270 of the *Philosophy of Right*.<sup>13</sup> Yet the success of a public justification of theism depends, we saw, on historical conditions absent in our time and likely to remain so for a long time to come. Whether or not they eventually materialize depends in part on whether liberal civil societies learn from their recent past.

Between 1939 and 1989 these societies fought off menaces from nationalist and internationalist fanaticisms partly by war and partly by integrating the goods (community, equality, respectively) they exaggerated into absolutes into the well-ordered life sufficient for dignity. This process continues in the post-1989 world. Distilling what the state must accommodate in nationalism and egalitarianism from their respective pathologies in ethnic chauvinism and borderless globalism is the immediate problem history has given us to solve. On the horizon is the kindred problem of how to integrate religions into the public life of free and equal beings so as to satisfy in the constitutional state deep human interests that must otherwise assume fanatical forms opposed to it.

## Notes

- 1 Karl Barth, *Protestant Theology in the Nineteenth Century*, trans. B. Cozens and J. Bowden, ch. 10; Eric Voegelin, "On Hegel – A Study in Sorcery," in J. T. Fraser, F. C. Haber, and G. H. Müller, eds., *The Study of Time*, pp. 418–51.

- 2 Lev., ch. 16, v. 1–2.
- 3 Voegelin, “On Hegel,” p. 426.
- 4 For an amusing diatribe along these lines see Voegelin, “On Hegel,” p. 420.
- 5 So Stephen Houlgate errs when he says that “there is ... only one spirit for Hegel – absolute spirit ... and we, as it were, are its head” (*Introduction to Hegel*, p. 243) or that Hegel thinks “[w]e can only ... bridge the gap between ourselves and God ... if we know that ultimately there is no fundamental gap between ourselves and God to be bridged ... (p. 255). Frederick Beiser and Michael Hardimon, equating a transcendent God with the remote God of faith, confusingly deny that Hegel’s God is transcendent without wanting to deflate Him into a deified humanity. But if we see the transcendence of remoteness as pseudo-transcendence, then we can say more naturally that Hegel’s God is both transcendent (distinct from humanity) and immanent in humanity. See Hardimon, *Hegel’s Social Philosophy*, pp. 51–52; Beiser, *Hegel*, 137.
- 6 *Nicomachean Ethics*, X, 1177b.
- 7 EL, para. 244; SL, pp. 752–3.
- 8 E. Fackenheim, *The Religious Dimension in Hegel’s Thought*, p. 161n.
- 9 M. J. Inwood writes (*Hegel*, p. 518): “It is not modesty to claim to be a mere mouthpiece for one’s subject-matter, particularly if one’s subject-matter is God.” But every judge claims to be a mouthpiece of the law, and every constitutional ruler claims to be a mouthpiece of the universal will. We would not think it a sign of humility for a judge or governor to announce that he will not presume to be law’s conduit but will instead rule according to his personal will. Why then should we think it a sign of a philosopher’s humility that he claims to express nothing but his personal opinions?
- 10 Phn. p. 16.
- 11 PR, p. 15.
- 12 Rawls, *Political Liberalism*, pp. 9–15, 36–40, 58–71, 133–72, 195–200.
- 13 See ch. 5, n. 118.



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